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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF JANUARY 19, 1993

9:00 A. M.

IN THE CONFERENCE ROOM

4-H CENTER

ABINGDON, VIRGINIA

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January 19, 1993

This matter came on to be heard on this the 19th day of January, 1993 before the Virginia Gas and Oil Board in the Conference Center at the 4-H Center, Abingdon Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B of the Code of Virginia.

MR. CHAIRMAN: Good morning. My name is Benny Wampler and I'm Assistant Director for the Department of Mines, Minerals and Energy. I'll ask our Board members to introduce themselves starting with Kevin.
(MEMBERS INTRODUCED.)

ITEM I

MR. CHAIRMAN: The first item that we have on today's agenda is an appeal of the Inspector's Decision from the Informal Fact Finding Hearing for IFFH 5192. This is docket number VGOB-92/10/20-0282. I've already asked the parties that wish to address the Board in this matter to come forward. Are there any others here today that wish to address the Board on this first agenda item? The record will show there are none. Mr. Counts, I'll ask you to start.

MR. COUNTS: Thank you, Mr. Chairman. Mr. Chairman, members of the Board, this appeal is rendered from the decision of the Oil and Gas Inspector which was dated September 16th, 1992. We have on file before the Board presently a motion to dismiss based upon the fact that the objection filed with the Inspector was not timely filed under Virginia Code Section 361.35. I would like to request that the Board rule upon this motion to dismiss prior to entering into testimony on this matter. And if you would like, Mr. Chairman, I'll be happy to present my arguments on that.

MR. CHAIRMAN: You're Ms. Thelma Musick, correct?

MS. MUSICK: Right.

MR. CHAIRMAN: Do you have anything that you wish to address

1 right now regarding the motion to dismiss?

2 MS. MUSICK: Yes, I do. You see, I didn't receive my notice
3 until after we had the meeting out at the office. Curtis
4 got his, but they delivered mine to someone else and she
5 didn't bring it to me until after the meeting out there.
6 And as soon as he got his to me -- he was gone at the
7 time he received it, but his daughter got it and she
8 brought it to me. As soon as I got it I did file the
9 notice.

10 MR. CHAIRMAN: On the return receipt card it says the article
11 that was addressed to you was signed by Don Musick.
12 Could you tell us who Don Musick is?

13 MS. MUSICK: That's my son. The one that he has in question
14 was delivered to Elizabeth Sexton and she brought it to
15 me after the meeting.

16 MR. CHAIRMAN: Okay.

17 MS. MUSICK: It was the next one that he received.

18 MR. CHAIRMAN: All right. We'll ask Mr. Counts to go ahead
19 and present his case on the motion to dismiss. You'll
20 have an opportunity to listen to that and then tell us
21 your side. Mr. Counts.

22 MR. COUNTS: Thank you very much, Mr. Chairman. The Oil and
23 Gas Act, 45.1-361.35 Subsection A, states that "Objec-
24 tions to new or modification permits may be filed with
25 director by those having standing set out in 361.30.

1 Such objections shall be filed within fifteen days of the
2 objecting party receipt of the notice required under
3 361.30." The Department has the receipts with respect to
4 the date that those objections were received. I'd also
5 like to present to the Board as Exhibit A a copy of the
6 date that the objection filed by Ms. Musick was filed
7 with the Department of Mines, Minerals and Energy which
8 was on August 12th. And that is seventeen days as
9 opposed to fifteen days required by statute. At the time
10 of the Informal Hearing we raised this objection with the
11 Inspector. The Inspector noted it and as to the date of
12 the Inspector's decision which was dated September 16th,
13 1992 it stated that, "The Inspector finds that the
14 objection submitted by Thelma Musick and Curtis Rasnick
15 was not received within the time limits as set out in
16 Section 45.1-361.35.A." Also state that -- and I'll be
17 happy to provide this to the Board as well also to Ms.
18 Riggs if she so desires, "statutes pertaining to time
19 constraints within which the raise an appeal are manda-
20 tory and imperative and are not discretionary. Signing
21 von the Evon rule requires notice of appeal and assign-
22 ments of heir to be filed within 30 days after entry of
23 final judgement is mandatory. Notice of appeal and
24 assignments of heirs must be filed within 30 days after
25 entry of final judgement. This rule is mandatory." I'll

1 be happy to provide that as well, Von Evon, Williams V.
2 Dean and Lyle V. Elkleberry. These are all Virginia
3 cases including one Virginia Supreme Court case. So
4 based upon this we would request that the motion to
5 dismiss be granted by the Board.

6 MR. CHAIRMAN: Any questions of Mr. Counts, members of the
7 Board? Ms. Musick, we'd like for you to recap for us -
8 not assuming that we know any of the facts -- tell us as
9 the facts are concerning your receipt of notice and your
10 appeal.

11 MS. MUSICK: Okay. Curtis, as I say, was away at the time he
12 got his notice. I have it here with me. And his
13 daughter called him. So he told her to get it to me.
14 Well, she just brought it to me because she knew if she
15 mailed it that I wouldn't get it in time. And as soon as
16 I got it I did answer it. After he told me he had his I
17 went to the post office and they was kind of reluctant to
18 help me. So I called the office and they said they had
19 mailed it out and gave me the number. I went back to the
20 post office, but I didn't get to trace it down until
21 after the meeting out there. And she brought it up to me
22 then after I came back from the meeting out there -- out
23 at the Gas and Energy Office. So I didn't get my notice
24 until after the meeting.

25 MR. COUNTS: Mr. Chairman, we would argue that Ms. Musick and

1 Mr. Rasnick were certainly put on notice. In fact, Mr.
2 Rasnick received his notice timely. Apparently he and
3 Ms. Musick both discussed the notice. We'd certainly
4 argue that Ms. Musick had plenty of time within which to
5 file the objection and that actual notice will certainly
6 be substituted for instructed notice as well.

7 MR. CHAIRMAN: Any questions, members of the Board?

8 MR. MCGLOTHLIN: Ms. Musick, you say that your notice was
9 accepted by another individual?

10 MS. MUSICK: Yes. The mail carrier left it with a lady by the
11 name of Elizabeth Sexton.

12 MR. MCGLOTHLIN: Do you have the number of that --

13 MS. MUSICK: I didn't bring it with me but I do have it at
14 home.

15 MR. MCGLOTHLIN: Mr. Counts, do you files reflect that this
16 was delivered to another person?

17 MR. COUNTS: I do not have a copy of that. So that would be
18 within the DMME's files.

19 MS. MUSICK: Mr. Fulmer might have the little card that she
20 signed to get it.

21 MR. CHAIRMAN: Is there another card other than this one?

22 MR. FULMER: Yes.

23 MR. CHAIRMAN: There is another one.

24 MR. FULMER: We're talking about two different notices. Let
25 me look here. (Pause.)

1 MR. COUNTS: Mr. Chairman, if I could, I would like to ask Ms.
2 Musick one question with regard to receipt of the notice.

3 MR. CHAIRMAN: You can go ahead and state the question.

4 MR. COUNTS: Mr. Chairman, I'd like to find out how long it
5 was from the date that Mr. Rasnick received his notice
6 until he called Ms. Musick.

7 MR. CHAIRMAN: I'm sorry. I didn't hear the question.

8 MR. COUNTS: I'd like to find out how long it was from the
9 date Mr. Rasnick received his notice until such time as
10 he contacted Ms. Musick. She stated that she spoke with
11 her brother, Curtis Rasnick. And I'd like to find out
12 how long it was from the time he received his notice
13 until he contacted her.

14 MS. MUSICK: I'm not really sure, but I think he got his
15 notice on like a Tuesday evening. And his daughter
16 couldn't get hold of him at that time. He was away, as I
17 told you. And she got hold of him on Wednesday and she
18 knew that -- and the time limit was going to be up, I
19 believe, on Tuesday the best that I can remember. And
20 she knew that she couldn't mail it and let me answer it
21 in time. So she drove down Thursday night and got it to
22 me on Friday. That's the best of my remembrance.

23 MR. COUNTS: Mr. Chairman, I would not argue that Ms. Musick
24 was not the party that signed the return receipt. But
25 with regard to her own testimony she's indicated that she

1 had actual notice of this quite some time in advance of
2 the scheduled date for the objections to be filed.
3 That's what we're saying, that she was put on actual
4 notice, she had the time to file a timely objection and
5 that did not occur.

6 MS. MUSICK: Two days.

7 MR. CHAIRMAN: You received it two days --

8 MS. MUSICK: I had it within my possession two days.

9 MR. CHAIRMAN: What Mr. Counts is alleging is whether or not
10 you had the card that you knew about the notices being
11 sent out. Did you know that the notices had been sent
12 out?

13 MS. MUSICK: Not until his daughter called me which was like
14 three days before.

15 MR. FULMER: As to the notice of application I'd like to
16 submit the certified return receipts in regards to this
17 application and when the notice was sent out in regards
18 to the application.

19 MR. CHAIRMAN: And this was a delivery date of July 27th,
20 1992?

21 MR. FULMER: Yes, sir.

22 MR. CHAIRMAN: This record shows that Mr. Curtis Rasnick's
23 information was received by Peggy Rasnick on July 27th
24 and it shows that Thelma Musick's material was received
25 by Don Musick on July 27th. So we need to really clarify

1 that we're talking about the application material. The
2 records that Mr. Fulmer's just given me, and I'll be
3 happy to show this to you, shows that Don Musick received
4 these for you on July 27th. Can you verify that?

5 MS. MUSICK: That's his signature. But the one in question
6 that we questioned out at the other office was the one
7 that's -- is this concerning the meeting of -- I guess it
8 was the 12th of September, right? That was the one in
9 question.

10 MR. CHAIRMAN: This is going back to the application that is
11 on file and in consideration by the Board.

12 MS. MUSICK: And that was the one that I didn't get and was
13 suppose to answer.

14 MR. CHAIRMAN: It shows that Don Musick received that on July
15 27th.

16 MS. MUSICK: Well, this was answered on August 5th. That's
17 well within the ten days.

18 MR. COUNTS: The wording of the statute, Mr. Chairman, is that
19 it must be filed, not dated. It could be dated, of
20 course, at any date. But that it must be filed with
21 fifteen days of the date that notification goes out. Mr.
22 Musick did receive it. Ms. Musick, Mr. Musick is your
23 son, correct?

24 MS. MUSICK: Yes.

25 MR. COUNTS: And does he live at home with you?

1 MS. MUSICK: Yes.

2 MR. MCGLOTHLIN: I'm somewhat confused now. Is there any way
3 we could get a chronological order of events?

4 MR. CHAIRMAN: I think that's what we most definitely must do.
5 I'm going back to the Informal Fact Finding Hearing to
6 see if these dates are in record. They should be. The
7 Board has that in it's file. As Mr. Fulmer begins his
8 Informal Fact Finding Hearing which was held on September
9 9th, 1992 concerning this case he finds the following,
10 "Permit application for EREX proposed pipeline system
11 VF44 Section 2 was submitted to the Division of Gas and
12 Oil, has received objections to the constructions of the
13 proposed pipeline in the New Garden district of Russell
14 County by Mr. Curtis Rasnick and Thelma Musick by letter
15 dated August 5th, 1992 and received on August 12th, 1992.
16 Curtis Rasnick and Thelma Musick both received notice to
17 the application on July 27th, 1992." And Mr. Fulmer
18 says, "The objection was submitted within the specified
19 time limits required under law." And then he goes into a
20 following summary of the objection. That's what the
21 Board has before it. Do you have anything to add to
22 that, Mr. Fulmer?

23 MR. FULMER: No, sir.

24 MR. CHAIRMAN: Do you have any comments, Mr. Counts?

25 MR. COUNTS: Yes, sir. Just a moment, please. (Pause.) Mr.

1 Chairman, in the transcript itself Mr. Fulmer indicates
2 that the requirements of the regulations under the
3 notification of hearing that their interpretation is that
4 notification by certified mail was given in accordance
5 with the regulations. Ms. Musick has argued that the
6 notification was not valid and Mr. Fulmer stated that
7 upon the advise of the Assistant Attorney General he
8 determined that notification was in accordance with the
9 regulations. Mr. Fulmer further stipulated during this
10 hearing that he would not at that point in time make a
11 decision based upon whether or not the objections had
12 been filed timely. At the date of the decision that Mr.
13 Fulmer made Paragraph A states that "The objection
14 submitted by Thelma Musick and Curtis Rasnick was not
15 received within the specified time limits as set forth in
16 45.1-361.35.A." It is clear in .35.A that the objections
17 must be received within fifteen days. It is clear that
18 Mr. Musick -- Mr. Dan Musick I believe it is -- the son
19 of Thelma Musick residing at the same address accepted
20 notification that was given in accordance with regula-
21 tions. It's further apparent from the record that the
22 objection was not filed until August 12th which was
23 seventeen days after the date that the notification was
24 sent out with respect to the Informal Fact Finding
25 Hearing. Therefore, the objection was not timely filed

1 and I would request that the Board grant our motion for
2 dismissal based upon the failure to file the objection
3 timely.

4 MR. CHAIRMAN: So are you clear, Ms. Musick, that we are
5 dealing with the original notice?

6 MS. MUSICK: Right.

7 MR. CHAIRMAN: And that your --

8 MS. MUSICK: I thought it was the other one they were talking
9 about. But I did file it within the time limit. I still
10 got it in the post office before my time was up because I
11 had to correspond with Curtis as to the agreement as to
12 how we were handling it.

13 MR. COUNTS: Mr. Chairman, not to belabor the point, but the
14 act requires that it be filed, not that it be mailed.
15 And as you will note from Exhibit A that I presented to
16 the Board, the filing date according to DMME is August
17 12th, 1992, seventeen days later.

18 MS. MUSICK: I sent it by certified mail like I had gotten my
19 delivery.

20 MR. CHAIRMAN: The law does require that the office receive
21 the objection within fifteen days. So it's not when it's
22 mailed. What we have to find is based on the law and the
23 law does require that it be received by the Gas and Oil
24 Office within the fifteen day time frame. So that is
25 what the Board is going to have to rule on. Any other

1 questions, members of the Board?

2 MR. EVANS: Mr. Chairman, I'd like to make a motion that we
3 grant the petition to dismiss based on the evidence.

4 MR. CHAIRMAN: We have a motion to grant the motion to
5 dismiss.

6 MR. KELLY: Second.

7 MR. CHAIRMAN: We have a motion and a second. Any further
8 discussion? If not, all in favor of the motion to
9 dismiss say yes. (ALL AFFIRM.) Opposed say no. (NONE.)
10 The motion to dismiss is granted and we can't hear the
11 case. We do want you to understand, Ms. Musick, if you
12 have anything like this -- it's clear that your letter is
13 dated August 5th, but it was received by the Gas and Oil
14 Office on August 12th and the Board has to rule on the
15 date of receipt. I hope you understand that. And if you
16 do have anything in the future it may be wise to deliver
17 it at the office rather than mail it or something like
18 that because it unfortunately doesn't allow us to
19 consider anything -- any of the other objections.

20 MS. MUSICK: Well, I thought about just taking it out there
21 and then I thought it was maybe one of the requirements
22 that it be mailed. So I didn't. And then it was on the
23 weekend, too.

24 MR. CHAIRMAN: I understand.

25 MS. MUSICK: There is one thing I would like to say off the

1 record or on. They have already cut a patch of this
2 right-of-way without any permit or our consent. They did
3 that October 30th, 1991. I have pictures to prove it if
4 you want to take a look at them.

5 MR. COUNTS: Mr. Chairman, I'd like to state also while we're
6 on the record that Equitable is operating under an oil
7 and gas lease granted to us by the mineral owner under
8 the Musick and Rasnick properties. And Ms. Musick does
9 indicate that a right-of-way patch was cut sometime in
10 October and I have no doubt that that very well may be
11 the case. The decision of the Inspector was dated
12 September 16th, 1992. There was no stay placed upon
13 operations and we would have the right to go on the
14 property and commence operations.

15 MR. CHAIRMAN: The Board will take a five minute recess and
16 reconvene five minutes promptly.

17 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)
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ITEM II

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3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the forced pooling of V-2532 and this is docket number
5 VGOB-92/12/15-0296. We would ask the parties that wish
6 to address the Board in this matter to come forward as
7 this time. The record will show that Mr. Counts and his
8 representatives are here and no others. Mr. Counts.

9 MR. COUNTS: Thank you, Mr. Chairman. At this point in time
10 I'd like to request the indulgence of the Board.
11 Equitable has items dotted all over the docket, but
12 primarily the vast majority of our items are commencing
13 at the end of the docket. I have one expert witness
14 which will not be able to be here until late today. I do
15 not think I have any parties that will object and I've
16 also checked with Buchanan Production Company and
17 Virginia Gas Company. If it would be acceptable to the
18 Board I'd like to request that Items II, VII, VIII, XVIII
19 and XXI all be moved to the end of the docket following
20 Item XXII which is a petition by Virginia Gas Company for
21 a forced pooling unit. We also have a significant
22 interest in Item XXVIII and if the Board would allow us
23 to move all those items to the end of the docket I think
24 it would help facilitate the flow of these hearings today
25 and perhaps enable us to get through in one day. I'm not

1 aware of any parties that would be objecting at all, Mr.
2 Chairman.

3 MR. CHAIRMAN: I think everyone here has heard the request.
4 Are there any objections to moving Items II, VII, VII,
5 XV, XXI and XXII to the end of the docket following
6 XXVIII?

7 MR. COUNTS: Scratch XXII. Just XXI after Item XXII on the
8 docket.

9 MR. CHAIRMAN: You want to move them to after --

10 MR. COUNTS: After Item XXII. That way I would pull all my
11 hearings together after XXII.

12 MR. CHAIRMAN: I thought I heard you and then I heard you say
13 that you had significant comments on Item XXVIII and I
14 was unclear about how you wanted to --

15 MR. COUNTS: I apologize for that confusion.

16 MR. CHAIRMAN: That's fine.

17 MR. COUNTS: We request for all those that you mention to be
18 moved after Item XXII on the docket and heard at that
19 time.

20 MR. CHAIRMAN: Okay.

21 MR. MCGLOTHLIN: I have no objection to moving them towards
22 the end of the docket, but with the amount of work we
23 have the other parties interested might not be coming in
24 all at the same time. They might be coming in later on
25 in the day thinking we had a large docket and there might

1 be some concern on that end.

2 MR. CHAIRMAN: I was looking to see. I believe all the items

3 following Item XXII as Mr. Counts represented are

4 Equitable's items except for Item XXVIII.

5 MR. COUNTS: That's correct.

6 MR. MCGLOTHLIN: Okay.

7 MR. CHAIRMAN: Any objection? The record will show that there

8 are none. Any objection, members of the Board?

9 MR. COUNTS: Thank you, Mr. Chairman and members of the Board.

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ITEM III, IV, V, VI

MR. CHAIRMAN: The next item on the agenda, the Board's agenda Item III, is a petition for a well location exception by Ashland Exploration, Incorporated. This is docket number VGOB-92/12/15-0297. I'll ask the parties that wish to address the Board in this matter to come forward at this time.

MR. SWARTZ: Mark Swartz and Howard Salisbury appearing for Georgia Pacific, Buchanan Production, and OXY, USA.

MR. McQUIRE: Grant Mcquire for Ashland Exploration.

MR. CHAIRMAN: Go ahead.

MR. McQUIRE: I'd like to address the Board on this matter and it also applies to the next three. I found out late Friday, about 5:00, that there is a potential title problem that affects the next four items -- all the ones that Ashland has today. And I am requesting this Board to continue us over to make sure that I have given notice to all the right parties. I haven't seen the document, but I'm afraid to go forward because I just may have to do this again. I would ask that this be continued over until I can clear up this title problem.

MR. CHAIRMAN: And this is for docket numbers VGOB-92/15/15-0297, 0298, 0299 and 0300, right?

MR. McQUIRE: That's right. I notified Mr. Swartz yesterday

1 about this and he told me that he had an expert coming in
2 to address some issues and I told him that I would be
3 happy to let him put his expert on today to avoid him
4 from having to come back.

5 MR. SWARTZ: Unfortunately when Grant called me Steve Malarky
6 who's to my right was in Atlanta. I had talked to him
7 ten minutes before and by the time I got back to him in
8 Atlanta he was already on an airplane. And I don't want
9 to have to fly him back out here. He's a reservoir
10 engineer and I wanted him here to address some issues
11 with regard to field rules for these wells. And Grant
12 has consented to let us offer that testimony and continue
13 the balance of the hearing so at least it would be in the
14 record. I'd like to proceed on that basis so I don't
15 have to spend the money to bring him back out here.

16 MR. CHAIRMAN: Ladies and gentlemen, are there any other
17 parties that are here today that wish to address the
18 Board in these four docket items that have just been
19 called? The record will show there are none. Therefore,
20 I don't think that we would be prejudicing anyone with
21 going ahead and hearing this if you have no objection.
22 Any problem with that, members of the Board?

23 MR. EVANS: I don't have any problem with putting the expert
24 testimony in the record. I do have a concern, though, at
25 some later date at the continuance the expert witness

1 will not be here for cross-examination.

2 MR. McQUIRE: I guess I could cross-examine him today if --
3 and I understand that his objection is general so that it
4 doesn't really matter how I reapply or if there are other
5 parties. I understand that their objection is that this
6 area needs field rules and whether they do it today or
7 next time doesn't really matter to Ashland.

8 MR. MCGLOTHLIN: Mr. Chairman, I have a concern that if there
9 is a possibility of bringing in another party that they
10 would not have the opportunity to cross-examine the
11 witness.

12 MR. McQUIRE: I'll briefly explain the problem to you. It
13 looks to me that there may be a contractual unit that
14 Ashland was not aware of that encroaches into our unit --
15 more appropriately, that we're encroaching into. It may
16 be that our units need to be redefined. I don't see
17 right now that we need to bring in any additional
18 parties, but I may need to re-notice the parties as to
19 the configuration of the unit and --

20 MR. SWARTZ: You may need to amend is what you're saying?

21 MR. McQUIRE: That's right. And I really don't know now until
22 I examine the document and the maps as to what the
23 problem may be. There may be no problem, but it appears
24 to me that I may have to come back and at least amend the
25 configuration of the units.

1 MR. SWARTZ: Well, to address the concerns I'm hearing from
2 the Board -- and Grant's not going to like this but it is
3 a potential solution -- if the Board is inclined to order
4 Ashland to pay the cost of bringing Mr. Malarky back -- I
5 mean, I got notice yesterday and he was on route from
6 Oklahoma. It's \$900 approximately for airfare plus one
7 night's hotel. And if the Board or Ashland would prefer
8 that he come back in February that's acceptable to me,
9 but I don't think that my client should have to pay to
10 bring him twice when I got notice yesterday. So if you
11 would rather --

12 MR. CHAIRMAN: That certainly is a private matter that you and
13 Ashland will have to worry about.

14 MR. SWARTZ: Well, court's order -- I don't know if you have
15 jurisdiction or not. I've had courts do this to me all
16 the time. It is an alternative. I am inclined, however,
17 to agree with Mr. McQuire and I have told him that Steve
18 Malarky's testimony is essentially going to be pretty
19 generic stuff on correlative rights, efficient develop-
20 ment issues that you would hear anytime you are looking
21 at the development of several units. And I think Mr.
22 McQuire is telling you -- making an accurate statement
23 that he's probably going to wind up trying to move his
24 units or re-figuring them and it's going to apply with
25 regard to what the amendment looks like.

1 MR. CHAIRMAN: We'll go ahead and hear the testimony, but both
2 parties are on notice that if additional parties are
3 brought in who are affected and they wish to cross-
4 examine after having an opportunity to view the record
5 then we're going to ask that that opportunity be granted.
6 I think that's what Mr. McGlothlin's raising, that we're
7 not limiting that opportunity. Is there any problem with
8 that?

9 MR. MCGLOTHLIN: Yes, sir. Not knowing the circumstances of
10 it's going to change in notification who you're going to
11 bring into this -- who's affected -- the access they're
12 going to have to knowing what we did at this hearing and
13 then they come back and they come in next month and then
14 we've got to continue this again while we wait for an
15 expert witness again. This was continued once.

16 MR. KELLY: Mr. Chairman, will we have a transcript of this
17 testimony that could be available to satisfy that
18 concern?

19 MR. CHAIRMAN: Yes. There will be a full transcript. We have
20 a verbatim recording of what we have going on here.

21 MR. SWARTZ: And I assume that I would have Glen VanGolen who
22 was unavailable today. That's why we had to bring Steve
23 in. Or Ken Curry or some other engineer from OXY in
24 Richlands here if there's another hearing. So there
25 would be an OXY representative who would have some

1 expertise who could be cross-examined and particularly if
2 we had a transcript it could be addressed, I suppose, in
3 an efficient way.

4 MR. MCGLOTHLIN: But that doesn't necessarily give them the
5 opportunity to cross-examine this witness.

6 MR. SWARTZ: Right.

7 MR. KELLY: But we said if that became necessary then you'd
8 have to bring him back.

9 MR. SWARTZ: Right.

10 MR. KELLY: Otherwise, a transcript may suffice is my point.

11 MR. CHAIRMAN: Any other discussion? Do you remain un-
12 convinced, Kevin?

13 MR. SWARTZ: I think you've proposed a reasonable solution
14 and if additional parties have to be added we will have
15 to deal with that issue. It's a reasonable reaction to
16 the situation which we find ourselves. If you look at
17 the property maps which you'll have in a minute, assuming
18 that the plat is accurate, it appears to me that you
19 would have to move these units significantly to affect
20 additional parties. I think it's unlikely that that's
21 going to be a problem.

22 MR. MCQUIRE: My quick glance is that I couldn't see that any
23 additional parties who needed to be added. But I had a
24 lot of this read to me over the telephone. It looks more
25 like I'll need to amend -- if do anything, I need to

1 amend and reconfigure the units if I need to do anything
2 at all.

3 MR. MCGLOTHLIN: The possibility of going ahead and having the
4 hearing and making amendments, would that put us in the
5 same situation that we might have to bring back the
6 witness again?

7 MR. SWARTZ: If you got new parties you'd have to file a whole
8 new application to amend. That's the way it works.
9 That's the problem. You'll see a bunch of amendments
10 that we filed and they look like new pooling applications
11 that were going to be heard today. And in fairness to
12 Mr. McQuire, he is not prepared to proceed.

13 MR. McQUIRE: I did tell Mark yesterday that it looked like I
14 couldn't go forward and ought not go forward and I
15 wouldn't be bringing my people down because of this new
16 development.

17 MR. SWARTZ: Which makes sense.

18 MR. EVANS: Mr. Chairman, if there are no new parties I'm of
19 the opinion that we should hear this -- hear the testi-
20 mony. And if there are no new parties brought in after
21 Mr. McQuire does his research then we'll consider that
22 testimony. If there are new parties then we'll disregard
23 the testimony today and they'll have to bring him back
24 in.

25 MR. SWARTZ: Or I could bring Glen. I mean --

1 MR. EVANS: Whatever.

2 MR. SWARTZ: Right. I understand.

3 MR. EVANS: We will disregard this testimony today if new
4 parties are brought in.

5 MR. McQUIRE: Or I could offer them an alternative. If there
6 were no parties this testimony could be read back in and
7 if those parties wanted to cross-examine then they might
8 have that opportunity later. They may not have any
9 cross-examination needs or I may have covered it for
10 them. That might be an alternative.

11 MR. MCGLOTHLIN: Well, it's the same basis of cross-examining,
12 if the witness is placed today and then we have new
13 information at the next hearing then we don't have the
14 opportunity to cross-examine on that new information.

15 MR. CHAIRMAN: Well, this proposal would protect that, that
16 Mr. Evans just brought up. In other words, if there are
17 new parties then we get new testimony. So the only risk
18 would be that we waste the time today in order to hear
19 this testimony so that if, in fact, there are no new
20 parties then you won't rehear this testimony later.

21 MR. MCGLOTHLIN: As long as it's spelled out in red ink.

22 MR. SWARTZ: Well, the other alternative is to dismiss these
23 things, I suppose.

24 MR. McQUIRE: Well, I'd file again and you'd have to fly him
25 back.

1 MR. SWARTZ: It seems to me that we're going to through with
2 these issues and that in light of the documents that I
3 have seen that seem to suggest that it is not probable
4 that there will be additional parties. This seems to me
5 to be an efficient use of your time and my client's
6 resources since Mr. Malarky is here.

7 MR. CHAIRMAN: We'll go ahead and risk that. We'll go ahead
8 and hear the testimony. We reserve the right to have you
9 present expert witness testimony again if we have a
10 different party affected.

11 MR. MCGLOTHLIN: Also reserve the right to have this witness
12 brought back if it's so necessary.

13 MR. CHAIRMAN: For the record, these four cases that we've
14 just read the docket numbers in are being continued. The
15 Board is hearing expert testimony today conditioned upon
16 no new parties being identified during the continuance.
17 If there are new parties identified the Board reserves
18 the right to disregard this expert testimony.

19 MR. SWARTZ: (Pause.) If I passed this stuff out properly you
20 should each have a yellow plat map which is Exhibit 1 and
21 then four overlays or grids, two of which are 126 acre
22 squares and two of which are 160 acre squares and
23 there's a fair amount of debate among Mr. Wirth and
24 myself as to whether it's better to lay the white piece
25 of paper over the yellow or to put it underneath. But

1 whatever works for you all, that's the purpose. They're
2 to be used together. Exhibit 1 -- and I think to give
3 you some understanding of the interest of the parties,
4 Howard and I appear for Georgia Pacific and Buchanan
5 Production and it's operator OXY, USA, and I have filed
6 since their interests are not exactly the same separate
7 objections to the pooling applications. This testimony
8 doesn't really pertain to the location exception although
9 I guess it is relevant because you may not need a
10 location exception if you go with field rules. But the
11 interest of Georgia Pacific here is Georgia Pacific
12 actually has a royalty interest in each of the three
13 proposed units which are shown on this yellow plat map
14 that you have. This yellow map is simply a copy of an
15 Ashland Exhibit and you can see that Georgia Pacific --
16 in fact, the wells are called GP wells -- is a royalty
17 owner in each of these units. And that is Georgia
18 Pacific's standing or interest. If you look kind of off
19 to the left there's a tract in the corner and I written
20 there BPC tract. Buchanan Production's interest is that
21 it has an oil and gas lease on what I have identified on
22 the plat that you've got in front of you as a BPC tract.
23 If you were to take the grids and the different sizes and
24 overlay them on this collection of four wells BPC's tract
25 could potentially be within the unit depending on how

1 field rules were implemented, if at all, and also -- I
2 think from a standpoint from BPC's royalty owner, their
3 lessor, there is a correlative rights issue for the
4 lessor in terms of the royalty interest. There is a
5 working interest issue with regard to Buchanan Production
6 and it's operator, OXY. And, of course, there's also an
7 offset well or an obligation under lease perhaps that
8 might be triggered to drill an offset well depending on
9 how these units ultimately are configured and depending
10 upon whether or not this Board elects to adopt field
11 rules either for a large section of the field or pro-
12 visional of field rules. So that essentially is the
13 interest of my several clients in this. GP is a royalty
14 owner. Buchanan Production has an oil and gas lease that
15 is within several hundred feet -- perhaps 300 or 400 feet
16 of the GPA5 circular unit. This I think will help. I'm
17 not going to argue the case at this point, but I think I
18 need to tell you a few things in terms of where we're
19 coming from before I get to Mr. Malarky and his testi-
20 mony. It's been some time since we have talked about
21 field rules, but this particular Board as implemented two
22 sets of field rules. We've had extensive hearings and
23 discussions with regard to Pilgrim's Knob. I think that
24 was probably over a year ago, but ultimately Cabot
25 pursued field rules for the Pilgrim's Knob area. Those

1 rules were implemented by this Board and are in effect at
2 this point in time. More recently we dealt with the
3 Oakwood II field rules dealing with active gob and with
4 short hole gas production. So I know the Board has dealt
5 with these issues before and I will just take a moment
6 because I think Mr. Malarky's testimony tracks these
7 kinds of issues to remind you of some of the relevant
8 provisions of the Virginia Code. The first section of
9 interest is Section 45.1-361.3 which is called construc-
10 tion. But the portions of that statute which are
11 relevant, I think, to the guidance that the Legislature
12 gave this Board in implementing the 1990 Act are partic-
13 ular relevant to this situation would be Subsections 1,
14 2, 3 and 5. Section 1 is that the act should be constru-
15 ed to effectuate the following purposes, number one is to
16 foster and what I would select here is the efficient
17 exploration for development, production, utilization, and
18 conservation of the Commonwealth's gas resources. Number
19 two is to provide a method of gas and oil conservation
20 for maximizing exploration, development, production and
21 utilization of gas and oil resources. Number three is to
22 recognize and protect the rights of persons who own
23 interests in gas, the correlative rights issue. And item
24 number five under construction is again to maximize
25 production and recovery -- although it deals with coal

1 it's the same focus. That one of the obligations of the
2 Board is to maximize production and recovery of the
3 relevant resources. The second portion of the statute
4 which I think gives you the power to do the sorts of
5 things that I'm talking about today or requesting you do
6 in terms of addressing field rules is 45.1-361.15 which
7 talks about additional duties and responsibilities of the
8 Board. Again we have this duty to foster and promote
9 safe and efficient exploration, to administer a method of
10 gas and oil conservation, to maximize exploration and
11 development. Item three is to administer procedures to
12 recognize and protect the rights of gas and oil owners.
13 And then subpart B of 361.15 specifically says that you
14 have the ability to prevent waste through design spacing.
15 You have the duty to protect correlative rights. You
16 have the ability to enter spacing and pooling orders, to
17 establish drilling units. You have the ability,
18 particularly when we're talking about conventional gas
19 and oil -- and these are Devonian wells. So we're not
20 talking about CBM. This is conventional. You have an
21 ability, if you chose, to get into allowable production
22 rates depending on what kind of design. It might be
23 appropriate here to think about that -- to classify pools
24 and wells. And then the last portion of the statute that
25 I would bring your attention to, and I know we've spent a

1 lot of time on this over the last couple of years, is
2 45.1-361.20 and this is sort of the implementation of the
3 policies behind the law that specifically address the
4 Board's ability to implement field rules, to create and
5 size drilling units. Sub A basically says that the Board
6 on it's own motion can consider field rules. And I think
7 what happened in the Pilgrim's Knob situation is we had a
8 very similar situation to what we have now with Ashland.
9 Edwards & Harding, if my recollection is correct, and
10 perhaps Cabot to some extent came to you all with
11 voluntary units or a combination of voluntary units and
12 statewide units and it was the Board's -- on the Board's
13 own motion you directed those parties and both of them
14 ultimately came up with different plans but you directed
15 them to come to you with field rule proposals. And
16 essentially what I'm asking for and the point of Mr.
17 Malarky's testimony is to perhaps encourage and convince
18 and persuade you all to direct -- and my objections
19 request this really -- to direct Ashland to come back.
20 And since they need to come back -- maybe it's something
21 you want to talk about today -- but to come back with
22 some kind of specific response to the issue of whether or
23 not field rules are necessary and if they are with some
24 kind of design. In any event, 361.20 says you can do it
25 on your own motion. It says a royalty owner can come

1 before you on it's motion. And then another portion of
2 the statute which I don't think we've ever implemented
3 before but is something you might want to think about is
4 Subpart E. It allows the Board to enter a temporary
5 order establishing a provisional field. So you could
6 essentially create fifteen or twenty units if you're
7 considering expense and data and so forth which is
8 another option. With those sorts of ideas in terms of
9 the objections that have been tendered and the obvious
10 intention of the Legislature because they tell us what
11 purposes this law was passed for and what your duties
12 are. In that context and in that prospective I'd like to
13 call Steven Malarky as a witness and do my direct
14 examination of Steve.

15
16 STEVEN MALARKY

17 a witness who, after having been duly sworn, was examined and
18 testified as follows:

19
20 DIRECT EXAMINATION

21
22 BY MR. SWARTZ:

23 Q. Could you state your name for the record?

24 A. My name is Steven J. Malarky.

25 Q. Where are you from, Steve?

1 A. I'm from Oklahoma City.

2 Q. And are you employed right now and, if so, by whom?

3 A. Yes, I am. I'm employed by OXY, USA.

4 Q. Do you have a job title with them?

5 A. Yes. I'm a reservoir engineer for OXY, USA.

6 Q. And when did you start with OXY?

7 A. I started with OXY in May, 1981.

8 Q. In summary what have you done for OXY, USA since then?

9 A. Since May of 1981 I've had various positions working as
10 an engineer for OXY, USA for eleven plus years. There's
11 been evaluation work. There's been field work and
12 there's been an extensive amount of evaluation and
13 reservoir engineering work.

14 Q. You're educational background, just where you went to
15 college and if beyond?

16 A. I received a Bachelor of Science Degree from Colorado
17 State University in 1981 in chemical engineering.

18 Q. I take it then OXY, USA would be your first employer
19 after college?

20 A. Yes, they were. And I'm also a registered professional
21 engineer.

22 Q. Have you testified before other conservation boards and
23 agencies in other states?

24 A. Yes, I have. I've testified as an engineering witness
25 before the Kansas Corporation Commission and the Oklahoma

1 Corporation Commission.

2 Q. And those corporation commissions in both states are the
3 equivalent in terms of responsibility -- a substantial
4 equivalent of the Virginia Gas and Oil Board?

5 A. Yes, sir.

6 Q. Have you ever worked in or performed reservoir studies in
7 the Appalachian Basin?

8 A. Yes, I have.

9 Q. Could you tell us about that?

10 A. Well, those were centered up in West Virginia and I've
11 performed kind of extensive evaluation work on Devonian
12 Shell -- production and reserves for Devonian Shell just
13 north of here in West Virginia.

14 Q. You've had a chance to review the pooling applications
15 with regard to these three Ashland petitions, correct?

16 A. Yes.

17 Q. And you understand that each of these three units that
18 are sought to be pooled are Devonian wells, correct?

19 A. Yes, sir.

20 Q. When did you work with Devonian shells in West Virginia,
21 approximately when was that?

22 A. Approximately 1988 is when it started.

23 Q. And how long were you involved in that project?

24 A. Probably partially through 1991. So about -- over three
25 years.

1 Q. And OXY. USA actually had an exploratory Devonian project
2 in place and were drilling wells in West Virginia at that
3 time?
4 A. That is correct.
5 Q. Have I furnished you with certain information to review
6 to assist you in forming some opinions and reacting in
7 some respects to the Ashland application?
8 A. Yes, you have.
9 Q. Did I furnish you with the applications?
10 A. Correct.
11 Q. Have I furnished you with certain portions of the
12 Virginia Code?
13 A. Yes.
14 Q. And have you had a chance to review those?
15 A. Yes, I did.
16 Q. Have I obtained for you certain information with regard
17 to the GPA1 well?
18 A. Yes.
19 Q. And have you had a chance to look at the production
20 records?
21 A. Yes, I have.
22 Q. And completion data to some extent?
23 A. Yes.
24 Q. The GPA1 well is right in the middle of the yellow plat,
25 is it not?

1 A. Yes, it is.

2 Q. And that's an existing well that's in place and has
3 produced from time to time?

4 A. Yes, it has.

5 Q. And originally that was an OXY, USA well, was it not --
6 or a city's well?

7 A. That is correct.

8 Q. And it was transferred or sold to Ashland at some point
9 in time?

10 A. Correct.

11 Q. It was drilled in 1981, right?

12 A. Correct.

13 Q. And it appears that it started producing in about 1986?

14 A. Yes, late 1986.

15 Q. What is the most recent production records that you have
16 for that well?

17 A. The latest production records I have were kind of through
18 the first part of 1990.

19 Q. So you've basically got records from 1986 to 1990?

20 A. Correct.

21 Q. Was the production seasonal or was it year round?

22 A. Production records show that it was seasonal production.

23 Q. Tended to be in the winter?

24 A. Yes. More in the winter, not really any production in
25 the summer.

1 MR. EVANS: I've got a question. Why is that? Was that a
2 function of marketing or was that a functioning of the
3 well?

4 THE WITNESS: From all of the records that I have reviewed it
5 was marketing. It was not with regards to the well. It
6 was capability to produce.

7 MR. EVANS: Thank you.

8 Q. (Mr. Swartz continues.) Did I ask you to specifically
9 look at certain issues in questions for me?

10 A. Yes, you did.

11 Q. Did I ask you to look at the economics of these wells? I
12 mean, there is a DWE next to each application which
13 indicates the cost to drill and complete the well. And
14 you saw that information, correct?

15 A. Yes, I did.

16 Q. And did I ask you just generally to look at the economics
17 of the well in terms of what your views might be on
18 whether or not we were looking at economic waste or
19 whether or not these wells made sense?

20 A. Yes, you did.

21 Q. And generally what were your conclusions in that regard?

22 A. Well, that these wells do make economic sense.

23 Q. So taking the production information from the applica-
24 tions, making some assumptions with regard to pricing,
25 using the production data to some extent in the AI it's

1 your view that these wells would make economic sense to
2 some operators?

3 A. Yes. To some operators these wells would be economical.

4 Q. So you have no concerns that you're going to voice with
5 regard to economic waste or economics with regard to
6 these wells?

7 A. That is correct.

8 Q. Did I also ask you to look at drainage in the Devonian
9 reservoir, given your familiarity with the Devonian
10 shells in West Virginia, what limited you have with the
11 GPAI, to come to some general conclusions or recommenda-
12 tions for this Board with regard to unit size?

13 A. Yes, you did.

14 Q. Could you tell the Board what your views are with regard
15 to appropriate sizes that might be selected for units in
16 the Devonian Shell in the general area that we see on the
17 plat, Exhibit 1?

18 A. Okay. The Devonian Shell is typically a very tight
19 reservoir and there's kind of a window where you kind of
20 feel comfortable with drilling for this production. And
21 somewhere in the middle of it is around -- what Ashland
22 has proposed around 126 acres. That's --

23 MR. EVANS: Let's hold off here just a second. I think we're
24 giving opinions now. But we haven't accepted this
25 witness as an expert yet. Are you finished with that

1 portion of qualifying?

2 MR. SWARTZ: Well, some of the people that come before you ask
3 you to accept his qualifications. I never have because
4 my assumption is that you will make assessments. If you
5 want me to do that I will ask you to do that.

6 MR. EVANS: Are you finished with --

7 MR. SWARTZ: I would move this witness as an expert qualified
8 to offer testimony in response to Mr. Evan's comment.

9 MR. CHAIRMAN: Any objection?

10 MR. McQUIRE: I don't need to voir dire.

11 MR. EVANS: It was for the record.

12 MR. SWARTZ: I understand. I guess I need a response, Mr.
13 Chairman.

14 MR. CHAIRMAN: There was no objection.

15 Q. (Mr. Swartz continues.) Do you remember the question?

16 A. Yeah, basically. What I've done is I've kind of taken my
17 working knowledge of the Devonian Shell and there's kind
18 of a window that typically most people accept for
19 drainage and how much a Devonian Shell well will drain
20 in. Proposed by Ashland, the 126 acres is within the
21 window that most people accept as being appropriate for
22 drainage. The acreage can go higher and the acreage
23 associated with the drainage can be smaller depending on
24 exact circumstances of the Devonian Shell at this
25 location.

1 Q. In your opinion, Steve, what would the low end of unit
2 size be and what would the high end -- what's the range?
3 A. You're probably looking at somewhere like 60 acres to 80
4 acres for a low end and pushing upwards of maybe 200
5 acres for the high end. That could change on specific
6 circumstances and as more data is acquired you might tend
7 to re-find that number. But that's kind of a general
8 window that is out there.
9 Q. The circular units which are shown on Exhibit 1 that
10 Ashland has used, you understand that those would be
11 statewide spacing units?
12 A. Yes.
13 Q. How many acres do they contain?
14 A. They contain approximately 125.6 acres.
15 Q. And then with regard to the exhibits that you prepared
16 for me, taking Exhibit 2 for example, are those 126 acre
17 squares?
18 A. Yes, they are. There has been a little bit of -- when
19 you go photocopying things numerous times you get things
20 a little bit -- things get a little bit skewed. So with
21 the photocopying process things may not be exact.
22 Q. But at least they're in the ball park?
23 A. They're in the ball park and that was the intent.
24 Q. And, in fact, the plat that we were talking about earlier
25 -- somehow in photocopying the plat has grown a little

1 bit and the grids may have grown or shrunk. But at least
2 for illustration purposes you attempted to make them 126
3 acre squares?
4 A. Yes, that is correct.
5 Q. And you attempted to scale Exhibit 2, one inch equals
6 1,000 feet, which is the scale that is reported on
7 Exhibit 1?
8 A. Yeah.
9 Q. When you did the originally?
10 A. Yeah. When it was all done originally it was all scaled
11 to match the existing exhibit map and then over the
12 photocopying process things have gotten kind of skewed a
13 little bit, but you can see the general focus that we're
14 trying to show.
15 Q. In terms of unit sizing or the amount of acreage in a
16 unit, if I understand the testimony that you've just
17 offered it's your opinion that the 126 acre unit in terms
18 of choosing an acreage by Ashland is within the range of
19 reasonable and you would not object to that as an
20 acreage?
21 A. That is correct.
22 Q. You have also prepared plats and that would be Exhibits 4
23 and 5 that are 160 acre squares, correct?
24 A. Correct.
25 Q. And would those also fall well within the range you've

1 described?

2 A. That is correct.

3 Q. There are differences between the grids that you have
4 prepared and some of the grids are an offset. Why did
5 you do that?

6 A. Exhibit 2 just shows grids all stacked on top of each
7 other and going across. Exhibit 3 shows them to be
8 staggered from row to row and that is just to accommodate
9 an operator who would like to maybe set up their drilling
10 pattern based on a different -- they already know maybe
11 which locations they would like to drill and this would
12 allow them to fit their locations within a regular
13 drilling pattern.

14 Q. To give the Board an example why don't you pick one of
15 your grid exhibits and overlay it on the plat just to
16 give them an indication of how these field rules pattern-
17 ed after one of these could accommodate the drilling
18 program that Ashland has outlined?

19 A. I'll just select Exhibit 3. What you typically do is --
20 I just placed Exhibit 3 in back of Exhibit 2. And if
21 you can hold it up where you can just get a little bit
22 of light in back of the two sheets and you place GP1A,
23 the existing Devonian well, inside of one of the drilling
24 windows and you can kind of see how the other proposed
25 locations that Ashland has proposed for the Devonian

1 wells, they kind of fall inside the drilling window. You
2 can just kind of move it around until you can line up all
3 four wells inside of the drilling window.

4 Q. And obviously if you were to use the 160 acre units it's
5 even less of a problem to accommodate the plans that are
6 shown on the plat to uniform spacing?

7 A. Correct. I need to stress again that the yellow sheet
8 over the photocopying process has been expanded a little
9 bit. It may show that this looks a little bit larger
10 than 126 acres as compared to my exhibit. When I looked
11 it before all the photocopying process took over things
12 -- these squares were exactly 126 acres. So if somebody
13 wanted to they could maybe expand them a little bit and
14 it would look a lot nicer or fit in even better.

15 Q. If you have an opinion -- and since you've prepared these
16 exhibits for me I assume that you have you. If you have
17 an opinion that squares are a more appropriate way of
18 addressing development or field rules predicated on
19 squares are more appropriate when addressing development
20 of the Devonian pool in this area, if you could express
21 that opinion and then give the reasons why you would
22 recommend a grid system as a field rules approach to
23 development?

24 A. Well, I think the biggest thing that a grid system does
25 for you is it eliminates what we call the islands of

1 undrillable acreage. Circles come together. As you can
2 see here with our Exhibit 1 if you draw circles around
3 all these wells you have islands of undrillable acreage
4 that fall in between the circles and in no way will you
5 be able to capture those reserves from under those tracts
6 of land. So you're going to have waste. You're not
7 going to be protecting correlative rights because you're
8 not going to capturing those reserves. In just placing a
9 grid system on this field it kind of gives an efficient
10 development program and it will help help protect
11 correlative rights and it will help assure that you
12 eliminate economic and physical waste. And it's basical-
13 ly due to the fact that you will not leave island of
14 undrillable acreage.

15 MR. EVANS: One question real quick. Did I hear you correctly
16 to say that that gas won't be recovered or that royalty
17 won't be paid on it?

18 THE WITNESS: It may not be recovered based on the how the
19 reservoir performs. If Ashland kind of goes in here and
20 develops it I'm sure they will have some kind of recom-
21 mendation on exactly what size spacing is best. But
22 there's a possibility that if they chose this and the
23 reservoir behaves exactly in this way that a well can
24 only drain so many acres based on what you can do to the
25 well that you may leave pockets of unrecoverable reserves

1 out there.

2 MR. EVANS: My point is that even at 160 square or an 80 acre
3 square or a 126 acre circle, that's still the case. If
4 the reservoir characteristics are such that it won't
5 drain to a bore it makes no difference what size the unit
6 is or where it is. If it's not going that way it's not
7 going to go that way. Is that a fair statement?

8 THE WITNESS: I guess maybe I'm a little bit confused on what
9 your question is.

10 MR. EVANS: I'm questioning your statement that -- undrillable
11 acreage I agree with, but that doesn't mean that gas
12 won't recovered.

13 MR. SWARTZ: You need to tell him something about the Devonian
14 Shell in terms of your ability to get it out of the
15 ground to answer his question.

16 THE WITNESS: Okay. It is known to be a tight -- an extremely
17 tight formation. And what I mean by that is the gas
18 really has trouble flowing through the reservoir. You
19 can't really go out there and drain a large area with a
20 single well bore. There's kind of a set limit and
21 there's a window out there that you're going to be able
22 to drain. And if you start drawing up these circles you
23 may leave -- well, you will leave pockets of acreage
24 sitting out there that aren't able to -- that are outside
25 the drainage pattern of a well. And as the well will

1 hit it's economic limit the rate will --

2 MR. EVANS: Will drop off?

3 THE WITNESS: The gas flow rate and the well bore will get so
4 small that the well would become economical and the well
5 will be plugged before those reserves had finally had
6 their chance to make it inside and be produced up that
7 current well bore.

8 MR. EVANS: And that window is, as you've said, between 60 and
9 80 and 200 at the outside?

10 THE WITNESS: Yeah, probably.

11 Q. (Mr. Swartz continues.) Did you give me specific
12 questions to ask Ashland's witnesses to give you more
13 information to fine tune this analysis of acreage? I
14 mean, if they had testified before you there were certain
15 things you wanted me to ask them?

16 A. Yes, there is.

17 Q. What are the kinds of things that you would like to know
18 and that the Board might like to know to be able to fine
19 tune the sizing here?

20 A. Well, one thing is there's a big question on the produc-
21 tion of the GPA1 well since 1990. We do not have
22 available data on what the production has been. That
23 would be used to help determine reserves of the well, the
24 capability of the well to produce. We need some more
25 production figures. I'd like to see if they have done

1 any kind of pressure analysis on this formation down here
2 in this area, the permeability, the porosity, water
3 saturation, general rock characteristics which would all
4 aid in determining the appropriate size for drainage
5 units to be -- the drilling units to be.

6 Q. Sometimes would it also be true that frack length or
7 frack half-length information is available and would
8 impact on this as well? I mean, how the fracks are
9 working and what they feel like the frack lengths are and
10 the shape of the frack?

11 A. That's correct. There's going to be certain orientation
12 of the fractures out in this area. It may change the --
13 the shape of the unit could change or the size of it
14 could change on how an operator proposes to complete
15 their wells. The size of the frack job, the amount of
16 stimulation work that they propose will all go into how
17 large the unit should be which will kind of tell you
18 then, "That's what I need to make my drilling unit so I
19 can recover all of the gas under that proposed track."
20 And it kind of depends -- there aren't exactly set rules
21 that this is the lower limit and this is the upper limit.
22 It depends on the physical rock properties and it depends
23 on what you do to the formation itself. You can kind of
24 do some things, take measures to increase your drainage.
25 People have put larger fracks on these wells. And if you

1 put larger fracks, you're reaching out further in the
2 reservoir, hopefully you're draining more reserves.

3 MR. EVANS: Okay. I understand.

4 THE WITNESS: And just to go on with what Ashland has propos-
5 ed, I'm sure they have looked at -- they say that they
6 would like to have 126 acres. Well, they probably looked
7 at that and said, "Well, this is the kind of frack job
8 that we're going to apply to this" which goes into the
9 economics, the costs, which all rolls into what is the
10 best unit or size of the unit for this drilling -- for
11 the drilling pattern.

12 MR. EVANS: I understand. Continue.

13 MR. SWARTZ: Unless there are any other questions from the
14 Board I don't have anymore questions for Mr. Malarky
15 right now.

16 MR. CHAIRMAN: Well, Ashland has proposed to drill and produce
17 these wells based on statewide spacing. And just so I
18 understand how you're shaping the objection, you're
19 objecting to that proposal saying essentially it's the
20 most -- the best way to produce the field. Now, what
21 field are we talking about here? I mean, I'm not trying
22 to move this into a field rules hearing but I think it's
23 important for the Board to understand just how broad
24 we're talking about. Are we talking about all of
25 Buchanan County for conventional production?

1 MR. SWARTZ: I'll give you my view and then ask Mr. Malarky to
2 comment. We're talking about the Devonian Shells because
3 all of these proposed wells are in the Devonian Shell and
4 I think Ashland has delineated that parameter. So we're
5 talking about the Devonian pool. There is no indication
6 here that they're trying to pool any other producing
7 formations. The only data that I'm aware of that Mr.
8 Malarky has seen pertains to the GPAI and I suspect that
9 we have no way of telling you what the appropriate
10 outline of a pool or field ought to be. Perhaps Ashland
11 has that information and perhaps you'll hear that from
12 them. You may recall in the Pilgrim's Knob field -- I
13 believe it was Cabot came in with an isopack line and I
14 don't remember if it was the five foot isopack or ten
15 foot that was kind of the limiting factor. But they had
16 enough data on other wells in Pilgrim's Knob and there
17 may be other Devonian data which Ashland is aware of
18 which would allow them to answer that question. To the
19 extent that there is not that kind of data and -- this is
20 kind of come back to where I started, Mr. Chairman. You
21 have an ability to enter provisional orders and you could
22 say ultimately if you're interested and feel that field
23 rules at least on a limited basis are appropriate you
24 could say for this proposed development we think field
25 rules should be implemented if that's the limit of your

1 data. I mean, I don't know what Ashland has. But the
2 well data that we've got is one well. I mean, can you
3 tell from one well where the Devonian is going to be or
4 do you know how big this reservoir would be likely to be?

5 THE WITNESS: I feel real comfortable in saying that I think
6 Ashland's going to have Devonian Shell in these surround-
7 ing -- in their proposed wells. The Devonian Shell is
8 pretty wide spread. I would not call this an exploration
9 area. These wells would be more along the lines of
10 development. You have an existing well bore in the
11 Devonian Shell and you're only stepping out less than
12 160 acres away.

13 MR. CHAIRMAN: Does OXY, USA have a conventional well in
14 Buchanan County in the Devonian?

15 MR. SWARTZ: Well, we had this one.

16 MR. CHAIRMAN: I understand, but do you have any others?

17 MR. SWARTZ: Do you know, Marty?

18 MR. WIRTH: We have no conventional production in this area.

19 Now, we did have an extensive field out in this area.

20 Mr. Kelly might help -- isn't it just an extension of the
21 Big Sandy? Because the Kentucky line is not very far
22 away and geology doesn't stop on the state line. I don't
23 want to get into engineering and geological, but that's
24 how you can compare the two. It's really an extension of
25 the Big Sandy gas field which extends from Kentucky,

1 Virginia, West Virginia. It's a large mass area.

2 MR. MCGLOTHLIN: Since Mr. Wirth brought it up, where is the

3 state line in regard to Exhibit 1?

4 MR. WIRTH: Did you happen to bring that big map with you?

5 MR. MCGLOTHLIN: Or if Grant can answer that.

6 MR. WIRTH: I think I can help you. I have a larger -- here

7 it is.

8 MR. CHAIRMAN: I don't think we need to get into that right

9 now. I was just getting ready to caution all of us that

10 all we're doing here is listening to this expert witness'

11 testimony and trying to confine the questioning around

12 that. We're continuing the hearing and not trying to get

13 on all the other matters of these four cases. Admittedly

14 it's a grey line.

15 MR. WIRTH: You're about 1,400 feet from the Kentucky border.

16 MR. CHAIRMAN: Any questions of this witness, members of the

17 Board?

18 MR. MCGLOTHLIN: Mr. Malarky, do you feel that your schematics

19 and with the overlays of Exhibit 1 and Exhibits 2 through

20 5 that you're providing this Board with enough informa-

21 tion -- the whole picture -- for us to make decision

22 regarding that?

23 THE WITNESS: Well, I think you have the opportunity here to

24 be able to kind of address that field rules should

25 probably come into place here at the start of the initial

1 development of the field. I think what the exhibits were
2 trying to show was that you can go to a regular drilling
3 pattern -- you know, we just picked squares -- and have
4 some kind of drilling window and be able to accommodate
5 Ashland in their current proposed locations. I think
6 what we're trying to say here is just that we would like
7 to see squares come into this because of the reasons
8 previously pointed out. I kind of think you have enough
9 data just to see why we would like to move in this
10 direction.

11 MR. MCGLOTHLIN: Are you familiar with the Pilgrim's Knob
12 field?

13 THE WITNESS: I've heard of it. I've had very limited
14 experience.

15 MR. MCGLOTHLIN: Could you tell me in regards to GP3A, 4 and 5
16 and 1 the proximity that these wells are to the --

17 MR. SWARTZ: Mr. Wirth might be able to give you an answer to
18 that.

19 MR. WIRTH: The Pilgrim's Knob field is basically in Patter-
20 son, King Mountain and -- I can't think of the -- maybe I
21 can show you where we're talking about. We're
22 talking --

23 MR. SWARTZ: Excuse me. Could you swear Marty in?

24 MR. CHAIRMAN: I don't think that we're going to get into any
25 of that testimony at this present time.

1 MR. SWARTZ: Okay.

2 MR. WIRTH: Basically it is the Patterson quadrangle. What we
3 call the Pilgrim's Knob is kind of like a foam. If you
4 would look at the field rules sitting down and basically
5 it goes down here. Here is the GPA1. But we also have
6 to remember Pilgrim's Knob is a Berea field, not a
7 Devonian Shell field.

8 MR. MCGLOTHLIN: Mr. Chairman, I feel that if they're going to
9 put this testimony on we need more of the whole picture.

10 MR. CHAIRMAN: I understand. It's awkward to have the expert
11 witness testify and then not get the entire case on. But
12 I think that we jeopardize far too much to go ahead and
13 try to get into the merits of the case except as it
14 relates to the expert witness.

15 MR. MCGLOTHLIN: Well, the expert witness is testifying that
16 there is some form of field rules that need to be
17 implemented here. And if -- I think Buchanan Production
18 is going to come forth and put on testimony from an
19 expert witness that this needs to be done. I think they
20 need to make a motion before this Board and have a motion
21 for field rules for this area.

22 MR. SWARTZ: Well, we have done that. There are three motions
23 basically that we have brought which we're not going to
24 get to today. But essentially I have asked the Board to
25 order Ashland who wants to do the development, if you

1 believe field rules make sense, to address them -- to
2 order Ashland to come to you with a field rules proposal
3 based on their data and their development. I mean, I
4 think it makes sense to order people who are proposing to
5 drill a million dollars worth of wells to send what
6 additional money is necessary to address the field rules.
7 We don't have a well here. We've got some adjoining
8 acreage. The other alternative is the Board on it's own
9 motion can say, "We're setting a hearing on field rules
10 for this area a month from now. All interested parties
11 need to show up and help us do that." And then the last
12 motion that I have brought is if you want to stop
13 somewhere short of field rules for a large area, which
14 Mr. Kelly has suggested you could run -- it sounds like
15 over a huge area. You could inquire into the desir-
16 ability of provisional field rules and pick an area that
17 encompasses this production or perhaps overlaps it
18 slightly or the last fall back is just address whether or
19 not you want to run square drilling units and configure
20 these five or six units to make it work so at least
21 you've got a starting point. I have brought alternative
22 motions sort of in that order and I know that what the
23 Board has done before is it has ordered -- I think
24 Pilgrim's Knob -- you sat it on you own motion and said,
25 "We're having a hearing 30 days from now. All interested

1 parties who have acreage or an interest in developing
2 this area come forward with a proposal or a group of
3 proposals and we'll work through it." So that's kind of
4 where I'm headed. I mean, I don't expect that I have put
5 enough information on the table today to allow you to
6 make an informed decision. But we need to start some-
7 where and I think your question for us is have we
8 demonstrated that, no. I mean, we don't have all the
9 data but we have expressed and tried to highlight a
10 concern that we have which you may or may not share that
11 the most efficient fair way to develop this resource is a
12 grid system. I'm not saying that in a smart way, but I
13 don't think you have all the data to make a decision. I
14 have tried to present enough data to allow you to address
15 it the next time you see these folks in terms of whether
16 or not field rules would be appropriate. I think we've
17 kind of forgotten poor Mr. McQuire has a right to cross-
18 examine him.

19 MR. CHAIRMAN: No, I haven't forgotten it. I was going to him
20 and then Mr. McGlothlin had a question. Any other
21 questions, members of the Board? Mr. McQuire.
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CROSS-EXAMINATION

BY MR. McQUIRE:

Q. Mr. Malarky, I understand you don't have any recommendations as to the size of the pool that ought to be unitized, is that right?

A. That's basically correct.

Q. OXY does have an interest adjoining this, is that what I heard --

MR. SWARTZ: Well, with BPC we do.

Q. (Mr. McQuire continues.) Buchanan Production?

A. Yes. We have an interest in BPC.

Q. Did I hear you testify that if you lay a grid of some sort over these four wells -- one is the A1 and then we've got A3 and A4 and A5 -- that you would increase production?

A. No, not that production would be increased. I don't --

Q. So you're not going to drain any more by laying a grid over it, is that right?

A. No. I guess I'm not really following what you're saying. Just by laying a grid on something does not increase the well's productivity.

Q. I thought that's what I heard you testify about. Did I mishear you?

A. What you're going to try to do is be able to have a grid

1 system that allows you to be able to drill all of the
2 acreage that you would like to be able to drill that you
3 would not -- if you go to a circular pattern you may not
4 be able to drill wells where you feel they are necessary
5 to just to say that in leaving these islands of acreage
6 out there that I have 20, 30, 40 acres in between wells
7 that I would not be able to ever recover the reserves
8 from under that tract.

9 Q. Well, it might be just the opposite, mightn't it? I
10 mean, if this circle were moved it may benefit Georgia
11 Pacific more to have a circle. They may get a larger
12 royalty interest?

13 A. You could move a well location around to influence the
14 working interest of a party. I think you could.

15 Q. I guess what I'm saying is that Georgia Pacific or any
16 hypothetical royalty owner could come out ahead with a
17 circle -- come out better with a circle than a square
18 depending upon where the circle was located, is that
19 right? Even though they're going to have islands of
20 undrillable acreage they may come out better and may have
21 more money by having a circle positioned in this spot
22 rather than having it grided off?

23 A. Well, I haven't looked at maximizing one particular
24 person's position on who maximizes the most saying, "I
25 want to maximize Ashland's position or for giving the

1 greatest working interest in the well." What I looked at
2 is trying to protect all parties associated -- all
3 working interest owners, all royalty owners -- by trying
4 to say that I'm not going to leave acreage out of a unit
5 and say, "Well, there's 5,000 acres right here and
6 there's another 5,000 acres right there." But because
7 the way the rules are that I can never drill a well
8 there.

9 Q. You don't know of any preference in the Virginia statutes
10 for squares over circles, do you?

11 A. Really the only thing that I know about for squares being
12 adopted was brought up before the Pilgrim's Knob and I do
13 believe there's some for CBM wells.

14 Q. You don't know if the Virginia Legislature shares your
15 idea that squares are preferable to circles?

16 A. No. I don't know exactly what their preference is. I do
17 know now is the time to make that determination and to --
18 or at least to be thinking about what kind of units
19 somebody would like to assemble to be able to protect all
20 parties involved.

21 Q. In your opinion are squares desirable -- in any event,
22 no matter if you're recovering coalbed methane or
23 conventional, no matter which level you're recovering it
24 from, are squares better in your opinion?

25 A. Well, something I think that is uniform, it might depend

1 -- if Ashland would present a geological and engineering
2 witnesses and could say -- maybe make some kind of --
3 analyze this reservoir and maybe think that the fractures
4 are running a certain way they may think that it's going
5 to have more of an elliptical shape on a drainage pattern
6 then they might propose rectangles. We just did not like
7 the circle pattern because it leaves the islands of
8 undrillable acreage. We're not saying that it has to be
9 squares and they have to be this size and it has to have
10 a certain set back. We just propose here's a standard
11 pattern which allows for protection of everybody, all
12 working interest owners and the royalty interest owners,
13 to be able to capture their reserves. I think the burden
14 of proof should come from Ashland and say the exact size
15 and the exact shape based on kind of a reservoir charact-
16 eristic.

17 Q. You've studied the Virginia statutes, haven't you?

18 A. I don't know that I've studied --

19 Q. You testified that you had read them in preparation for
20 this.

21 MR. SWARTZ: Well, he didn't testify he read all of him. He
22 said I have given him certain Code Sections.

23 A. (The witness continues.) I have read certain portions of
24 the statutes.

25 Q. Is it fair to say -- and you may object because it's a

1 legal opinion, but it is fair to say that the burden is
2 upon the person proposing the squares to prove that
3 squares should be used?

4 MR. SWARTZ: Could you show me where in the statutes that it
5 says that? I'd be fascinated. That's an objection.

6 MR. McQUIRE: The establishment of field rules --

7 MR. SWARTZ: You need a thesis then.

8 MR. CHAIRMAN: We're not going to get into the witness
9 answering legal questions.

10 Q. (Mr. McQuire continues.) But I do hear you say that you
11 recommend in all instances squares or rectangles?

12 MR. SWARTZ: I'm going to object to that. That is a mis-
13 characterization of his testimony. He didn't say in all
14 instances.

15 MR. CHAIRMAN: Sustained.

16 Q. (Mr. McQuire continues.) Are you familiar with the size
17 of Ashland's lease hold interest in this area?

18 A. Not really. No, I'm not.

19 Q. Would it make any difference to you if Ashland could only
20 drill six wells as opposed to sixty wells? Would it make
21 any difference to you in as far as recommending that
22 field rules be established?

23 A. Well, I think one thing is you -- I've dealt with finding
24 new fields for a lot of years and you don't always know
25 exactly how large something is going to be and what you

1 like to do is maybe get the rules in for orderly develop-
2 ment at the start instead of just having random rules and
3 drilling wells not all under the same -- you would like
4 to have things go in from the start and I don't think
5 anybody really exactly knows how many wells they're going
6 to drill, the exact limit of them, until they start
7 getting into the actual drilling, completion or testing
8 the wells. So I would think you would want to have some
9 kind of rules in there if you're going to drill six wells
10 or sixty because you may drill one more or you may drill
11 fifty-nine more.

12 Q. Is it your opinion that even if Ashland or another
13 company has a small plot of acreage, let's say 200 acres
14 in there, and they're only going to drill one well that
15 they ought to go forward and set field rules for an
16 entire pool?

17 MR. SWARTZ: I'm going to object to that as irrelevant. We're
18 talking about four wells here in close proximity. It has
19 nothing to do with it.

20 MR. CHAIRMAN: I'm going to overrule that. I believe your
21 expert has raised the question about the entire area
22 being pooled -- or establish field rules for. So I'm
23 going to allow him to answer the question.

24 A. (The witness continues.) Would you ask the question
25 again?

1 Q. Is it your opinion that a person or a company that is
2 going to develop a small amount of acreage -- hypothetic-
3 ally they have a 200 acre tract and they're going to
4 develop one well. Is it your opinion that that person
5 ought to go forward and petition the Board for field
6 rules so that everything around him -- even though he
7 doesn't have a lease hold interest in it, that everything
8 around him might be developed in an orderly manner?

9 A. Well, I think one thing, even if you had a small interest
10 if you are adjoining somebody and the way you develop
11 your own small little piece of the pie may affect
12 somebody just right neighboring you, I think you should
13 have some kind of field rules which would protect you and
14 it would protect them, not just because I have this one
15 little 200 acre tract that I can do anything that I want
16 to do with well spacing -- just the production associated
17 with that that it should be more wide spread and not just
18 because I have a small piece of this pie that I can do
19 anything I want with that piece. Because I think there
20 can be some affect on the neighboring acreage.

21 MR. McQUIRE: Nothing further.

22 MR. CHAIRMAN: Any other questions, members of the Board?

23 Okay. These cases are continued and we thank you, Mr.
24 Malarky for your testimony.

25 (Witness stands aside.)

1 MR. CHAIRMAN: Let's take a five minute break.

2 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)

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3 ITEM IX

4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 the force pooling of unit S-4. This is docket number
6 VGOB-92/12/15-0303. We would ask all of the parties that
7 wish to address the Board in this matter to please come
8 forward at this time. (Pause.) Any other parties that
9 wish to address the Board? The record will show there
10 are none. Mr. Swartz.

11 MR. SWARTZ: Appearing for Buchanan Production and OXY, USA,
12 Mark Swartz and Howard Salisbury. This is a pooling
13 application for pooling under the Oakwood coalbed methane
14 gas field II rules. So we're going to be talking about
15 short hole and/or active gob production. At least at
16 this point the only witness that I intend to call is Mr.
17 Sam Gordon.

18 SAMUEL E. GORDON

19 a witness who, after having been duly sworn, was examined and
20 testified as follows:
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DIRECT EXAMINATION

BY MR. SWARTZ:

Q. State your name.

A. Samuel Edward Gordon, II.

Q. Mr. Gordon, who do you work for?

A. I work for OXY, USA, Inc.

Q. And your job title with OXY, USA is what?

A. Regulatory affairs coordinator.

Q. Did you participate in and sign both the notice of hearing and the application that was filed with regard to this pooling application on unit S-4?

A. Yes, I did.

Q. The applicant here is Buchanan Production Company and Buchanan Production Company is a Virginia general partnership, is that correct?

A. That is correct.

Q. The two partners in Buchanan Production Company are corporations by the names of Appalachian Operators, Inc. and Appalachian Methane, Inc., is that correct?

A. That is correct.

Q. And both of those partners in Buchanan Production are wholly owned subsidiaries of Oxidental Oil and Gas Corporation?

A. That is correct.

1 Q. Is Buchanan Production authorized to do business in
2 Virginia?
3 A. Yes, it is.
4 Q. Now, with regard to the designated operator issue, has
5 Buchanan Production Company requested that the Board
6 appoint someone other than itself as operator if this
7 application should be approved?
8 A. Yes, it has. It has requested that OXY, USA be appointed
9 as the operator of this property on behalf of BPC.
10 Q. Is OXY, USA a Delaware corporation?
11 A. It is.
12 Q. Has OXY, USA been authorized to do business in the
13 Commonwealth of Virginia, does it have a blanket bond on
14 file as required by law, and is OXY, USA registered with
15 the Department of Mines, Minerals and Energy?
16 A. Yes, it is.
17 Q. Is there a relationship between Buchanan Production
18 Company and OXY, USA whereby Buchanan Production Company
19 delegated to OXY, USA "the authority to explore, develop,
20 and maintain the properties of Buchanan Production
21 Company"?
22 A. Yes, there is. There's an agreement in place and it is
23 Exhibit J-1 in the application.
24 Q. And with regard to that delegation of authority to OXY,
25 USA by the applicant here are there certain people within

1 OXY, USA that have been given specific responsibilities
2 with regard to Buchanan Production's properties and the
3 development of those properties?

4 A. Yes, that is true. Glen VanGolen is the general manager
5 for Buchanan, Martin E. Wirth is land manager, and myself
6 as regulatory manager.

7 Q. Has a consent been filed as part of this application
8 whereby OXY, USA has consented in the event that the
9 Board should appoint it as operator to serve as operator
10 and to follow the provisions of the Virginia Code and the
11 regulations of this Board and the regulations and rules
12 of the DMME?

13 A. Yes, it is. It is shown as Exhibit J, Page 2, of this
14 application.

15 Q. The respondents that we're talking about here that would
16 be affected in the event that this application for
17 pooling were granted are listed in the notice, correct?

18 A. That is correct.

19 Q. And who are we talking about?

20 A. We're talking about Gary Wayne Deel and Barbara Deel and
21 Linda Stacy.

22 Q. And if we go to the plat which is filed, Exhibit A, I've
23 highlighted a tract in yellow and is that the tract
24 that's affected by this pooling application?

25 A. That is correct. On our Exhibit B we identify that as

1 tract number seven.

2 Q. And the two persons who are respondents have undivided
3 interests in that tract or claims arising out of that
4 tract?

5 A. That's correct.

6 Q. Let me back up a moment. Did you cause copies of the
7 application and the notice of hearing to be mailed to the
8 respondents?

9 A. Yes, I did.

10 Q. Did you receive cards back from any of them?

11 A. We received a card back from Gary Wayne Deel and Barbara
12 Deel.

13 Q. And Exhibit B indicates that you do not have an address
14 for Linda Stacy, is that correct?

15 A. That is correct.

16 Q. So there would have been no mailing to her?

17 A. That's correct.

18 Q. Was there also a publication?

19 A. Yes, it was. We published this in the Virginia Mountain-
20 eer on the 19th of November. We have since supplied to
21 Mr. Fulmer's office the Exhibit E, certification of
22 publication, and also Exhibit F which is certification of
23 mailing.

24 Q. Were both Exhibit E and Exhibit F filed or at least
25 directed to Mr. Fulmer's office on December 10th, 1992?

1 A. Yes. That is correct.

2 Q. There are also some folks listed in Exhibit B-1?

3 A. That is correct. In our title search we found that there
4 were some tax liens filed of record. One with United
5 States Internal Revenue Service and one from the Common-
6 wealth of Virginia.

7 Q. In your judgement of the Virginia Gas and Oil Act treat
8 these kinds of lien holders as owners and entitle them to
9 notice under Section 19?

10 A. Not to my knowledge. We did send them courtesy copies of
11 this application since they had filed a lien of record.

12 Q. So you're not joining them as respondents but you've
13 sent them courtesy copies?

14 A. That is correct.

15 Q. With regard to this application at this point do you want
16 to amend to add any respondents or do you want to dismiss
17 any of the three respondents?

18 A. No, we do not.

19 Q. You want to proceed as noticed?

20 A. Yes.

21 Q. With regard to the standing of Buchanan Production
22 Company as an applicant, if we go back to Exhibit A, Page
23 2, could you tell the Board what Buchanan Production
24 Company's interest is in the coal and oil and gas
25 affected by this unit?

- 1 A. Exhibit A, Page 2, has been prepared in accordance with
2 the previous hearing that -- excuse me. We have 100
3 percent of the coal owners under lease and we have 99.4
4 percent of the oil and gas owners under lease.
- 5 Q. If you go down to the bottom of Exhibit A, Page 2,
6 there's a paragraph or an entry 4-B. Is that .51 percent
7 of the oil and gas interest -- the interest that would be
8 affected if this pooling application would be approved?
- 9 A. That is correct.
- 10 Q. Now, when you or others who are employed by OXY, USA and
11 are engaged in performing functions for Buchanan Produc-
12 tion Company are attempting to lease acreage on a
13 voluntary basis are there certain terms that you routine-
14 ly have offered and have, in fact, leased acreage for in
15 Buchanan County -- coalbed methane acreage?
- 16 A. Yes, there is. We have offered and successfully negotia-
17 ted leases on the basis of \$1 per acre bonus which is a
18 one time payment.
- 19 Q. Is it paid up front?
- 20 A. It is paid up front to the individual we are negotiating
21 the lease with. Royalty provisions in the lease call for
22 a one-eighth royalty and the term would be as long as
23 production continues as far as a force pooled interest
24 would be in this case or for five years.
- 25 Q. If it's a voluntary lease the lease term is five years

1 whether or not anything is drilled?

2 A. That's correct.

3 Q. And since the orders only extend for a year you've got to

4 drill it in a year?

5 A. That's correct.

6 MR. MCGLOTHLIN: Mr. Gordon, while you're on the subject of

7 the \$1 bonus, just for my information do you prorate that

8 on the acreage?

9 THE WITNESS: It's \$1 per acre.

10 MR. MCGLOTHLIN: Per acre?

11 THE WITNESS: Yes.

12 MR. MCGLOTHLIN: Here we have .205 acres. Do they get 20 and

13 a half cents?

14 THE WITNESS: That's correct.

15 MR. MCGLOTHLIN: Thank you.

16 MR. SWARTZ: There's \$80 in an 80 acre unit, you're right.

17 Good question.

18 MR. MCGLOTHLIN: I don't think that's ever been brought out.

19 Q. (Mr. Swartz continues.) If you would turn, Sam, to

20 Exhibit G, Page 1, it is a depiction of the development

21 that we're talking about here, right?

22 A. That is correct.

23 Q. As we've seen before, is the S-4 unit kind of outlined in

24 a dark square?

25 A. Yes. There is a dark border around the 80 acre unit.

1 Q. What longwall panel affects that unit -- the S-4 unit?
2 A. It will be the VP3, the South Mine 15 Development.
3 Q. Just a small portion of it falls within this unit and, in
4 fact, the percentage is set forth on Exhibit G, Page 1,
5 is not?
6 A. That is correct. Our calculations reflect that about
7 .713 acres of the panel falls under this unit which
8 calculates to .56 percent of the panel.
9 Q. And would this proposed development of this panel that
10 would affect this unit start out as short hole production
11 as we've discussed in the past and if mining progresses
12 as anticipated ultimately you would have some active gob
13 production as well?
14 A. That is correct. Yes.
15 Q. Turning back a page there is Exhibit C which is an
16 estimate of allowable costs which for some reason or
17 other you neglected to sign originally, right?
18 A. That is correct. And I do have copies for the Board that
19 are signed.
20 Q. Mr. Gordon, did you yourself prepare Exhibit C, not in
21 the sense of typing but generate the figures that are
22 reflected there?
23 A. Yes, I did.
24 Q. And the copy you just gave the Board, does it indicate
25 when you prepared the DWE?

1 A. Yes, it does. It bares the date of November 12th.

2 Q. And what is your opinion with regard to your estimate as

3 to the allowable costs that will be expended specifically

4 with regard to unit S-4?

5 A. Our figures came to \$21,000 for this unit.

6 Q. We've seen in the past well bore fees of \$142,500, I

7 believe.

8 A. That's correct.

9 Q. Can I assume since there is no such fee here that you do

10 not contemplate -- or the development does not contem-

11 plate that a well bore would be within this unit?

12 A. That is correct. If you look at the diagram on G-1 it is

13 just picking up a small piece of the panel and there will

14 be no -- to our knowledge there will be no development

15 well there or gob well.

16 Q. Turning now to Exhibit G, Page 2, and bearing in mind

17 that we're only with regard to unit S-4 dealing with one

18 panel, the VP-315 development panel -- there are two

19 panels reported here, but it's the one on the far right

20 hand side that we're concerned with with regard to unit

21 S-4, correct?

22 A. That's correct.

23 Q. And the top portion of what's reported on Exhibit G,

24 Page 2, is that an effort to capture all costs spent with

25 regard to all units affected by the 15-D panel?

1 A. That is correct.

2 Q. And what is your estimate as to the reasonable cost
3 expended with regard to all units affected by that panel
4 -- the total cost?

5 A. Our total cost comes to \$1,543,975.

6 Q. And then if you go to the bottom half of Exhibit G, Page
7 2, for purposes of participation or carried interest is
8 there a further calculation that pertains specifically to
9 unit S-4?

10 A. Yes, it is. At the bottom of the page, again on the
11 right hand side, dealing with this development we have S-
12 4 set out with the .56 percent which is reflected in
13 Exhibit G times the \$1,500,000. So the proportionate
14 part for S-4 would come to \$8,646.

15 Q. So that would be the cost that you would be beginning
16 with in terms of addressing your participation cost or
17 your carried multiple?

18 A. That is correct.

19 Q. If you turn to Exhibit G, Page 3, again since we only
20 have one panel it's only reported once. Could you tell
21 the Board what is reported on Exhibit G, Page 3?

22 A. On Exhibit G, Page 3, we have set out the two claimants,
23 Gary Wayne Deel, et ux, being his wife Barbara, and Linda
24 Stacy. We reflect that their interest in the unit would
25 calculate to .256 percent. The part of the panel that

1 underlies the unit is .56 percent. And if you multiply
2 those two percentages together their interest in the
3 panel would be .0014 percent each.

4 Q. So the far right hand column is actually their division
5 of interest when you look at panel production?

6 A. That's correct.

7 Q. This is an 80 acre unit?

8 A. Yes, it is.

9 Q. And are we talking about all seams below the Tiller?

10 A. Yes, we are.

11 Q. In general would the depth of the target formation be
12 the Pocahontas #3 at approximately 2,000 feet?

13 A. That is correct.

14 Q. And generally with regard to the plan of development
15 that's shown on Exhibit G, Page 1, and described else-
16 where in the application is it your opinion that the
17 applicant's plan of development is a reasonable plan or
18 method to develop the coalbed methane resources within
19 and under this unit and within the other units affected
20 by this panel?

21 A. It is, yes.

22 Q. Will the proposed method of development, specifically
23 short hole production initially and then active gob
24 production later, contribute to the protection of
25 correlative rights of the various owners and also tend to

1 lessen the likelihood of physical waste and economic
2 waste in your view?

3 A. Yes, it will.

4 MR. SWARTZ: That's all I have of Mr. Gordon.

5 MR. CHAIRMAN: Questions, members of the Board?

6 MR. EVANS: Mr. Gordon, is this a re-pooling?

7 THE WITNESS: This is not. This is a new pooling.

8 MR. CHAIRMAN: Are there any other Board orders that impact
9 this unit?

10 THE WITNESS: Yes. I didn't bring those with me, but -- by
11 impact do you mean as far as the panel's concerned?

12 MR. CHAIRMAN: Yes.

13 THE WITNESS: Yes. I believe we've previously pooled several
14 of the units on this panel and I do not have my list in
15 front of me. We're talking about basically ten units
16 here and I believe we've pooled a number of them. Do you
17 remember them?

18 MR. SWARTZ: Not without looking at my list. I think what the
19 Chairman may have been asking you was to tell him whether
20 or not we've got any well or order under field rules I on
21 unit S-4.

22 THE WITNESS: Not to my knowledge. Not to my knowledge. No.

23 MR. CHAIRMAN: Other questions, members of the Board?

24 MR. MCGLOTHLIN: In regard to the (Inaudible) would it be
25 advisable to escrow the interest or -- I guess I'm asking

1 our attorney's opinion on -- I know that when Stacy's
2 will be escrowed for an unknown address, but --
3 MS. RIGGS: Which interest are you inquiring about, Exhibit
4 B-1?
5 MR. MCGLOTHLIN: Yes, ma'am. I guess what I'm asking is is
6 there any guidelines to us on what to do in this situa-
7 tion?
8 MR. CHAIRMAN: For the tax liens?
9 MR. MCGLOTHLIN: Yes, sir.
10 MR. CHAIRMAN: I don't think we have any guidelines that would
11 distinguish the Commonwealth or the U.S IRS from any
12 other claimant. And what we would do would be, in fact,
13 to escrow and to give them the same options we would any
14 other claimants under law.
15 MS. RIGGS: Like a judgement credit or anybody else that seeks
16 to impose a lien against those proceeds.
17 MR. SWARTZ: The problem is it is -- Sam and I looked at 19 in
18 terms of what do you owe lien holders and it seems to me
19 that 19 contemplates that we're talking about owners. I
20 don't view tax liens as owners. But it seems prudent
21 from our standpoint to not pay money when we have a
22 notice of lien. I mean, we would normally deal with this
23 issue if we weren't subject to the Act in a way that they
24 were participants so that we weren't paying money subject
25 to a lien and incurring a lot of billing. I think that's

1 sort of the way you all need to look at it.

2 MS. RIGGS: By not naming them as respondents you're not --

3 the escrow agent would not set up an account in anyway

4 that proves to their interest.

5 MR. SWARTZ: Correct. And I don't think you should.

6 MS. RIGGS: They would have to enforce their rights through

7 normal process.

8 MR. SWARTZ: Right, garnishment or whatever.

9 MR. MCGLOTHLIN: I didn't mean for us to have the escrow agent

10 set up a specific account, but just that we should escrow

11 all the money instead of --

12 MS. RIGGS: Well, that will happen under the supplemental

13 order.

14 MR. SWARTZ: It looks to me like you're going to get an

15 affidavit from us ultimately. Because we have an

16 undivided interest here that in spite of these tax liens

17 this money appears like it's going to be escrowed.

18 MR. GORDON: Yes, it will be escrowed.

19 MR. SWARTZ: So in this particular instance it's not a problem

20 because the money's going to be escrowed anyway.

21 MR. GORDON: Plus, may I also offer that we're showing that

22 these people have a claim on the oil and gas side. If

23 the coal holds it may be a moot point. And under normal

24 operations the IRS will contact an operator and tell them

25 that they hold the tax lien or these people owe taxes to

1 them, and once we get that information we automatically
2 start paying the IRS for credit to their account until
3 it's retired and the IRS tells us that they're paid up.
4 Do we ever revert our records back to a direct payment?
5 As far as the Commonwealth goes, I'm not that familiar
6 with their tax group. But the IRS, I have dealt with
7 them on several occasions with royalty owners.

8 MS. RIGGS: When the supplemental orders go into place and the
9 statement of interests are paid over you have circum-
10 stances where that's occurring now, will be reported over
11 to the escrow agent so that they may know if the monies
12 are being directed somewhere other than the escrow
13 account?

14 MR. SWARTZ: We're starting to see tax liens on some of these.
15 This is not the only one. So this is going to reoccur.
16 This is the first time I think we've come to you with a
17 tax lien. And I think I would remember if we had done
18 this, but this is the first time as far as I can recall.
19 But there are more -- there may even be more today.
20 We're starting to see more judgement liens and tax liens
21 and I know Howard sees them all the time under the
22 division orders. So this is going to keep happening.

23 MR. CHAIRMAN: So you have an actual notice of levy from the
24 IRS or the Commonwealth?

25 MR. GORDON: No, we don't. The records revealed it.

1 MR. SWARTZ: Right. In doing title we have picked this up.
2 We have not been levied on it.

3 MR. CHAIRMAN: I was just clarifying for the record.

4 MR. SWARTZ: Right.

5 MR. GORDON: I would say that in the supplemental order when
6 we prepare our division or exhibit there will be nota-
7 tions on this tract as to these interests and the fact
8 that there are tax liens out there.

9 MR. SWARTZ: So the escrow is aware of it.

10 MR. CHAIRMAN: That's what we need to do. We need to make
11 sure for subsequent action by the Board that this doesn't
12 drop through the crack. Other questions?

13 (Witness stands aside.)

14 MR. MCGLOTHLIN: Mr. Chairman, I move that we accept the
15 petition as set before us.

16 MR. CHAIRMAN: We have a motion to approve the petition.

17 MR. EVANS: Second.

18 MR. CHAIRMAN: A motion and a second. Any further discussion?
19 If not signify your approval by saying yes. (ALL
20 AFFIRM.) Your disapproval by saying no. (NONE.) It's
21 unanimous decision. Let's go ahead and recess for lunch.
22 Come back at 12:45.

23 (AFTER A LUNCHEON RECESS, THE HEARING CONTINUED AS
24 FOLLOWS:)
25

ITEM X, XII, XIII

MR. CHAIRMAN: The next item on the agenda is a petition for the forced pooling of unit T-16. This is docket number VGOB-92/12/15-0304. We would ask all the parties that wish to address the Board to come forward at this time.

MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing for the applicant, Buchanan Production Company and also for OXY, USA, Inc. Mr. Chairman, Item X which you have just called, unit T-16, involves the same parties and the same issues as docket Item XII which is unit T-15 and docket Item XIII which is unit S-15. The history that -- all three of these docket items are applications for pooling orders, but these units have previously been pooled by prior order. So essentially this is an amendment situation where we are asking the Board to pool some additional interests and amend prior orders with regard to these three units. They involve the same folks. And the genesis of this, on or about November 5th, 1992 the respondents that we have named or at least their representatives contacted OXY and indicated that they claimed or that they were asserting a claim to coalbed methane arising out of an interest that they had in tract one which is shown on the plat. So Mr. Gordon then prepared all this paperwork to seek to protect that claim. On

1 December 8th, having filed all this paperwork and gone
2 through all this effort, a call came into OXY's office
3 from Mr. Owens, the gentleman who signed for the cards
4 here, indicating -- this is just verbal, but indicating
5 to an OXY employee that they were no longer asserting a
6 claim. Mr. Gordon and Mr. Wirth and I have discussed
7 this. We do not have anything in writing from them. We
8 have done the work. But we wanted you to know why we are
9 proceeding so you don't feel that we have not explained
10 this situation to you. And we would prefer -- but
11 obviously I think you need to know this so if you a view
12 that differs from ours you could advise us of that. We
13 would prefer to go ahead and pool these claims because
14 on the theory that there's nothing to prevent them from
15 calling OXY next week and reasserting a claim. And
16 having done all the work, the publications, the mailings,
17 we would prefer to consolidate these three, incorporate
18 the prior records and offer just a basic testimony to
19 establish a record to go ahead and force pool this
20 interest in these three units. Is that clear as mud or
21 does that make some sense?

22 MR. CHAIRMAN: I understand. Any questions, members of the
23 Board?

24 MR. MCGLOTHLIN: Mr. Swartz, are you saying that the Owens
25 were or were not pooled the first time?

1 MR. SWARTZ: They were not. In other words, the paperwork
2 that was filed originally did not -- out title efforts
3 did not indicate that they had an interest. So we did
4 not notice them and were not seeking to pool. We then
5 get a call out of the blue, perhaps provoked by the
6 publication, that they're claiming an interest. So I
7 believe when we were here last we indicated we were going
8 to have to come back. We may not have, but we certainly
9 knew that and we filed these. And then after we filed
10 them we get another call saying, "Never mind." And we're
11 concerned that we address this potential claim on the
12 theory it could be reasserted.

13 MR. GORDON: Mr. McGlothlin, they're claiming the tract that
14 we show Jerry and Phyllis Raines to own and we gave that
15 testimony in the first hearing on these units. So it's
16 the Jerry and Phyllis Raines interest that they were
17 saying they actually owned it.

18 MR. SWARTZ: And is it still your view based on the title that
19 Jerry and Phyllis are the mineral owners of that tract?

20 MR. GORDON: Our best effort on title still shows Jerry and
21 Phyllis to have the better claim of the two. But still
22 to protect their claim -- he brought it forth and said
23 that that original deed didn't convey it. We filed
24 paperwork to protect his claim.

25 MR. SWARTZ: This is one of those situations where you don't

1 agree with what you're hearing but you're hearing it and
2 you need to respond. These people feel they have a
3 claim -- at least some of the time they do.

4 MR. CHAIRMAN: Again, is there anyone else that wishes to
5 address the Board in this matter that's present here
6 today? The record will show there's no one else. You
7 may proceed.

8 MR. SWARTZ: May I, Mr. Chairman, sort of handle these three
9 units sort of together?

10 MR. CHAIRMAN: Yes. We just need to get the docket numbers
11 clearly in the record.

12 MR. SWARTZ: Okay. Let me do that. What I would ask is that
13 we be allowed to consolidate 92/12/15-0304 which is unit
14 T-16 that you just called with 92/12/15-0306 which is
15 unit T-15, Item XII on the docket, and also consolidate
16 those with Item XIII which is VGOB-92/12/15-0307. And
17 preceding I would make a specific request that with
18 regard to unit T-16 the testimony and exhibits offered
19 on November 17th, 1992 at a hearing before this Board
20 with regard to unit T-16 the VGOB docket number and the
21 record that I'm asking be incorporated was 92/11/17-0283.
22 With regard to unit T-15, that was heard on July 21st,
23 1992 and the docket number of the testimony and the
24 exhibits that I would like incorporated today was
25 92/07/21-0236. And the last one, unit S-15, I would like

1 to incorporate the testimony and the exhibits, that was
2 heard on July 21st, 1992 and the docket number that was
3 assigned to it originally when it was first heard was
4 92/07/21-0237.

5 MR. CHAIRMAN: Okay.

6 MR. SWARTZ: The only witness that I would call with regard to
7 these three units would be Mr. Gordon who's already under
8 oath.

9
10 SAMUEL GORDON

11 a witness who, after having been previously sworn, was
12 examined and testified as follows:

13
14 DIRECT EXAMINATION

15
16 BY MR. SWARTZ:

17 Q. State your name again for us, please.

18 A. Samuel E. Gordon, II.

19 Q. Mr. Gordon, did you prepare or participate in the
20 preparation of and actually sign the notices and the
21 applications with regard to these three units, T-16, T-15
22 and S-15?

23 A. Yes, I did.

24 Q. And did you cause copies of all three notices and all
25 three applications to be mailed as required by Virginia

1 Code?

2 A. Yes, I did.

3 Q. Did you mail them certified mail?

4 A. Yes, I did.

5 Q. You mailed them to a representative of the Owens,

6 correct?

7 A. Yes, we did.

8 Q. If you could find that card or a card.

9 A. We mailed these documents to a Mr. -- I presume that's

10 Louit W. Owens -- L-O-U-I-T, care of Post Office Box

11 1232, Grundy, Virginia.

12 Q. And this was the same gentleman who called OXY's office

13 on November 5th who asserted a claim on behalf of these

14 heirs, correct?

15 A. That is correct.

16 Q. In each of these three cases did you get a return receipt

17 card back signed on behalf of Mr. Owens?

18 A. Yes. I did.

19 Q. In addition did you publish a notice in a newspaper and

20 if so, which one and when with regard to each of these

21 three units?

22 A. Yes. We published it on November 19th, 1992 in the

23 Virginia Mountaineer and the certifications were returned

24 to us and I in turn mailed them to Mr. Fulmer's office on

25 December 10th, the certification of publication and the

1 certification of mailing.

2 Q. And would have been Exhibits E and F, right?

3 A. E and F, yes. That's correct.

4 Q. Starting with unit T-16, if you look at Exhibit B the

5 interest that would be affected by this order in the

6 event that the Board were to pool the Owens interest

7 would be an undivided net interest in the unit of 15.75

8 percent, correct?

9 A. That is correct.

10 Q. And that is all that we are seeking to affect by this

11 pooling application?

12 A. That is correct.

13 Q. And the balance of the paperwork that you have filed with

14 the Board, can you tell me whether or not the DWE is the

15 same. Exhibit G would be the same except that you would

16 show this new interest for these respondents?

17 A. That is correct. Everything would remain the same.

18 Q. As from the prior hearings that's being incorporated?

19 A. Correct.

20 Q. Now, turning to unit T-15 which is 92/12/15-0306, we've

21 already talked about mailing and publication. If you

22 would just turn to Exhibit B again. The interest that

23 would be affected by this application and the amendment

24 to the original order is an 11.14 percent undivided

25 interest in the unit in question, correct?

1 A. That is correct. Yes.

2 Q. And Exhibit G, Page 3, would reflect that addition

3 interest?

4 A. That is correct.

5 Q. With regard to the balance of the exhibits on T-15, are

6 they the same as they were in the original hearings that

7 are being incorporated and would the testimony be the

8 same?

9 A. Yes. That is correct. Everything would be the same.

10 Q. With regard to S-15 which is 92/12/15-0307 again I would

11 direct you to Exhibit B. What is the undivided net

12 interest within the unit that would be affected by this

13 pooling application and the amendment of the prior order?

14 A. 9.65 percent.

15 Q. Again, the last page of Exhibit G which sets forth the

16 division of interest which is Page 3 would add a division

17 of interest for these heirs and devisees, correct?

18 A. That is correct. Yes.

19 Q. And in all other respects are the exhibits with regard to

20 unit costs, panel costs, development plans the same as

21 they were when this matter was originally heard?

22 A. That is correct. They are the same.

23 Q. And the testimony would be the same?

24 A. That's correct.

25 MR. SWARTZ: That's all I have.

1 MR. MCGLOTHLIN: Mr. Swartz, previously this percentage was
2 allotted to a different person?
3 MR. SWARTZ: It still is.
4 MR. MCGLOTHLIN: Does this change -- how do we --
5 MR. SWARTZ: With regard to tract one the amended order would
6 show two people claiming.
7 MR. CHAIRMAN: A supplemental order?
8 MR. SWARTZ: Right. So the -- what's the name of the original
9 people that you show?
10 MR. GORDON: Jerry and Phyllis Raines.
11 MR. SWARTZ: They will remain subject to the order and we
12 simply will be showing a potential conflicting claim to
13 theirs.
14 MR. GORDON: It will be a dual claimant on the oil and gas
15 side.
16 MR. MCGLOTHLIN: I'm just trying to figure out how we're going
17 to --
18 MR. SWARTZ: I think your question was a good one and that is
19 what happens to the original folks? The answer is they
20 definitely need to stay on because they -- our opinion is
21 they have title. But we have these people who have at
22 least at a point in time contested that. And they need
23 to thrash that out just like any other --
24 MS. RIGGS: Well, the Board can't make a determination on a
25 title dispute situation. So all you can do is add them

1 all in as claimants and then they'll have to resolve the
2 title issue amongst themselves to see who's entitled to
3 the distribution at the time of distribution of escrow.
4 MR. MCGLOTHLIN: Do we do this like tract one A owner and
5 tract one B owner and --
6 MS. RIGGS: Right.
7 MR. SWARTZ: It's not any different really than the situation
8 where you've got somebody who owns coal who is different
9 than somebody owns oil and gas. If you'll show that
10 tract then you'll have an oil and gas claimant and a coal
11 claimant. We're familiar with that. I mean, that
12 happens all the time. And this is just a situation where
13 you've got two oil and gas claimants, one saying my title
14 is good and the other saying no, mine is. It's the same.
15 MR. MCGLOTHLIN: I'm just trying to figure out how the escrow
16 agent is going to --
17 MR. SWARTZ: Presumably what I hope these people would do is
18 they would go to the Owens' once this starts to pay and
19 escrow and see if they can get something in writing for
20 them and that will resolve it.
21 MR. GORDON: I believe this account is already in an escrow-
22 able estate because we have a coal ownership different
23 from the oil and gas. So it's going to be escrowed to
24 begin with from our original testimony.
25 MR. MCGLOTHLIN: I agree with you that they both need to be on

1 there.

2 MR. CHAIRMAN: Any other questions, members of the Board?

3 (Witness stands aside.)

4 MR. MCGLOTHLIN: I move that we accept the petition.

5 MR. CHAIRMAN: We have a motion to approve.

6 MR. KELLY: Second.

7 MR. CHAIRMAN: A motion and a second. Any further discussion?

8 MR. MCGLOTHLIN: Do I need to make my motion to accept the
9 petition for all three of them or do you want to do that
10 separately?

11 MR. CHAIRMAN: I think the way the record is that we can
12 go with all three since they are consistent. It's the
13 same thing being changed in all three -- I mean supple-
14 mented.

15 MR. MCGLOTHLIN: Mr. Kelly, I'll put the VGOB numbers in there
16 so we'll be straight. I make a motion that we approve
17 the petition for VGOB-92/12/15-0304, 92/12/15-0306 and
18 92/12/15-0307 which amends VGOB-92/11/17-0283, VGOB-
19 92/07/21-0236 and VGOB-92/07/21-0237.

20 MR. KELLY: I would second that.

21 MR. CHAIRMAN: Okay. I have a motion and a second. Any
22 further discussion? If not, all in favor of approving
23 say yes. (ALL AFFIRM.) Opposed say no. (NONE.) It's
24 unanimous.

ITEM XI

1
2
3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the forced pooling of unit W-19, docket number VGOB-
5 92/12/15-0305. We would ask all the parties that wish to
6 address the Board in this matter to come forward at this
7 time.

8 MR. SWARTZ: Howard Salisbury and Mark Swartz appearing for
9 Buchanan Production Company and OXY, USA.

10 MR. CHAIRMAN: The record will show there are no other parties
11 wishing to address the Board. You may proceed.

12 MR. SWARTZ: This situation -- it's always wonderful to have
13 an opportunity to force pool the Commonwealth of Virgin-
14 ia. And what happened here, this is an amendment as
15 well. When title was initially performed State Route
16 624 goes through the unit. If you all have the plat or
17 can find the plat, when title was initially done there
18 was an assumption that all that was acquired was surface
19 and that is what was indicated. And subsequent due
20 diligence and title work indicated that it appears that
21 the Commonwealth actually acquired a few interests under
22 this road. You can see that it comes in and out of the
23 unit and that's what we're talking about here. The
24 reason that we are back before you on this unit is
25 subsequent title work indicated the Commonwealth had a

1 potential claim, fee interest, and the prior order needs
2 to be amended to reflect the Commonwealth as a claimant.
3 I would ask that the Board permit us to incorporate prior
4 testimony and exhibits. This matter was originally heard
5 on September 15th, 1992. When it was heard on that date
6 it was assigned VGOB-92/09/15-0265. At this point I
7 anticipate my only witness will be Mr. Sam Gordon.

8
9 SAMUEL GORDON

10 a witness who, after having been previously sworn, was
11 examined and testified as follows:

12
13 DIRECT EXAMINATION

14
15 BY MR. SWARTZ:

16 Q. I will remind you that you are under oath. State your
17 name again.

18 A. Samuel E. Gordon.

19 Q. Sam, if you could turn to Exhibit B because we have a
20 little bit of housekeeping to do -- or you can share my
21 Exhibit B with me. Did the discovery that the Common-
22 wealth had a claim cause some of the interests of people
23 who were previously forced pooled to change?

24 A. Yes, it did.

25 Q. Do you want to dismiss any people today?

1 A. Yes. We would like to dismiss the respondents listed in
2 tract five being Pamela Jones and Tom Jones. We have
3 contacted them and negotiated a lease. In the paperwork
4 on the first hearing she was listed as Pamela Darnell and
5 she has since married and is now Pamela Jones and her
6 husband is Tom or Tommy Jones.

7 Q. And they have both signed a lease with OXY?

8 A. That is correct.

9 Q. And at the prior hearing weren't they the folks that had
10 cashed the check and not sent the lease back?

11 A. That's correct.

12 Q. Okay. And that's why they were force pooled and we now
13 have a lease. With regard to Mr. Ratcliff who's under
14 tract 2-B, was he subject to the prior order and was his
15 interest pooled?

16 A. Yes, it was.

17 Q. And the reason he is listed here is his interest changes
18 slightly, correct?

19 A. That is correct.

20 Q. The Commonwealth, of course, in tract 2-F and 5-A was not
21 pooled and that's who we're seeking to pool by this
22 amendment?

23 A. That's correct.

24 Q. You're asking that Pamela Jones and Tom Jones be dismiss-
25 ed -- Carol Barnett also under tract 5 -- were Carol

1 Barnett and Sparky Barnett pooled when this case was
2 previously heard?

3 A. Yes, they were.

4 Q. And are they shown on Exhibit B and were they noticed
5 because their interest changes slightly because of the
6 Commonwealth's claim?

7 A. That's correct.

8 Q. Did you prepare or participate in the preparation of and
9 sign the notices of hearing and the application in this
10 matter?

11 A. Yes, I did.

12 Q. Was both the notice and the application mailed to the
13 people listed on the second amendment of Exhibit B?

14 A. Yes, it was.

15 Q. What was the status in terms of getting cards back from
16 those folks?

17 A. We got cards back from Carol and Sparky and the Common-
18 wealth and from Ms. Ratcliff, yes.

19 Q. Was the notice of hearing published in a newspaper and if
20 so, which one and when?

21 A. It was published in the Virginia Mountaineer on November
22 19th and again, as soon as certification came in we
23 submitted this publication as Exhibit E to Mr. Fulmer's
24 office along with Exhibit F which is proof of the
25 mailings.

1 Q. And those were mailed to Mr. Fulmer's office when?
2 A. December 10th, 1992.
3 Q. Have you reflected Page 3 of this application that's
4 being heard today the division of interest that would be
5 attributable to the persons whose interests we've just
6 discussed that were changed slightly because of the
7 Commonwealth's interest and have you also shown the
8 Commonwealth's interest?
9 A. Yes, I have.
10 Q. And those would be Pages 3 and 4 of amended Exhibit --
11 well, actually Page 3 is amended and Page 4 -- well,
12 they're both amendments, correct?
13 A. That is correct.
14 Q. Other than the amended Exhibit B which deals with the
15 folks who are parties and whose interests are being
16 affected and Page 3 of Exhibit G, in terms of the money
17 involved and percentages of the panel in the unit is
18 everything the same as it was when this matter was first
19 heard?
20 A. It is. Yes, it is.
21 MR. SWARTZ: If the Board has no questions for Mr. Gordon I
22 would tell you that I have offered the testimony I think
23 I need to present at this point and would request that
24 the application be approved.
25 MR. CHAIRMAN: What about the rights to election? Do you

1 believe that those rights to election have been affected
2 since the percentages have changed and do the parties get
3 another shot at right of election?

4 MR. SWARTZ: Well, obviously the Commonwealth has a right of
5 election and we're going to have to wait on that.

6 MR. CHAIRMAN: I'm talking about the other parties whose
7 percentages have changed.

8 MR. SWARTZ: I would assume that you would probably have to
9 afford Mr. Ratcliff, the Barnetts and obviously the
10 Commonwealth since they're new the statutory election
11 period.

12 MR. MCGLOTHLIN: Ms. McCoy also?

13 MR. SWARTZ: I think you're looking at the wrong Exhibit B.
14 There are a bunch of them. You need to find Exhibit B,
15 second amendment. Ms. McCoy was previously pooled and I
16 don't think her interest is affected -- or was she
17 dismissed?

18 MR. GORDON: I believe you'll find that she is deceased and
19 that Pamela and Carol split her interest.

20 MR. SWARTZ: Right. She was dismissed at the last hearing.
21 Julie C. McCoy. I shouldn't say she, but that interest
22 was dismissed.

23 MR. MCGLOTHLIN: Okay. So Pamela Jones, Tommy Jones are
24 now --

25 MR. SWARTZ: They're dismissed because they've signed a lease.

1 MR. MCGLOTHLIN: Okay.

2 MR. SWARTZ: We've asked today that they be dismissed. So
3 we're basically talking about the Commonwealth, Mr.
4 Ratcliff and the Barnetts.

5 MR. CHAIRMAN: For the Board's record and to make sure that we
6 have a clear record of it, the document that I have is
7 still showing the same thing that Mr. McGlothlin was
8 reading from -- Julie McCoy.

9 MR. SWARTZ: You ought to have something like this.

10 MR. GORDON: I sent an amendment to Mr. Fulmer on November
11 25th amending that exhibit.

12 MR. CHAIRMAN: I heard him say second amendment but we don't
13 have it.

14 MR. FULMER: Yeah, they're correct. There was an amendment we
15 also received on November 24th. But there was also one
16 that was sent on the 25th and we received it on the 30th.
17 This is incorrect. I apologize to the Board.

18 MR. SWARTZ: Well, we need to shoulder some of that responsib-
19 ility. We sent in three amendments. Do you want to
20 borrow this for a minute?

21 MR. CHAIRMAN: No. I think we've got the record straight. I
22 just wanted to make sure that the Board recognized that
23 we didn't have what you were talking from. Mr. Fulmer
24 will mail a copy of that to the Board members so they'll
25 have that in their file. Any other questions, members of

1 the Board? Do you have anything further, Mr. Swartz?

2 MR. SWARTZ: No, I don't.

3 MR. EVANS: I move that we accept the petition.

4 MR. CHAIRMAN: A motion to accept the petition.

5 MR. KELLY: Second.

6 MR. CHAIRMAN: A motion and a second. Any further
7 discussion? If not, all in favor signify by saying yes.
8 (ALL AFFIRM.) Opposed say no. (NONE.) It's a unanimous
9 decision.

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ITEM XIV

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3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the force pooling of unit N-3. This is docket number
5 VGOB-92/12/15-0308. We would ask the parties that wish
6 to address the Board in this matter to come forward at
7 this time.

8 MR. SWARTZ: Mark A. Swartz and Howard Salisbury appearing for
9 Buchanan Production and OXY, USA.

10 MR. CHAIRMAN: The record will show there are no other parties
11 that wish to address the Board. You may proceed.

12 MR. SWARTZ: This is another amendment. The reason for this
13 amendment is the party who we are seeking to pool -- or
14 parties -- contacted OXY after the original application
15 has been filed and claimed an interest. I'll let Sam
16 tell you about the title there. And we needed to reflect
17 their interest and join them. It's an attorney in
18 Grundy, a Mr. Sloan. Mr. Wirth called him several times
19 and sent the application to him that indicated that it
20 was going to be put on for hearing. I called him several
21 times and he ever never called me back. I told him
22 basically the same thing, that we need to address this
23 issue which was brought to your attention from a title
24 standpoint. Sam can tell you about it.
25

1 SAMUEL GORDON

2 a witness who, after having been previously sworn, was
3 examined and testified as follows:
4

5 DIRECT EXAMINATION
6

7 BY MR. SWARTZ:

8 Q. Mr. Gordon, you need to state your name and I'll remind
9 you that you're under oath.

10 A. Samuel E. Gordon.

11 Q. What was the issue that Mr. Sloan brought to your
12 attention with regard to title?

13 A. On the well location plat I direct your attention to the
14 tract that's identified as tract 10. He brought to our
15 attention that he and his wife were claiming the minerals
16 under that tract -- the oil and gas minerals under it.

17 Q. And that would have been in lieu of -- originally we show
18 on tract 10 --

19 A. Originally on tract 10 we showed a Leslie G. Looney widow
20 and that was sent care of Ricky Dean Looney.

21 Q. Essentially Mr. Sloan furnished you with a copy of a deed
22 indicating a transfer to him and his wife, correct?

23 A. Yes. That is correct.

24 Q. And then you subsequently filed this notice of hearing
25 and this application to deal with that issue?

1 A. That is correct. Yes.

2 Q. This is an amendment of a prior order or a request for an
3 amendment of a prior order, correct?

4 A. That is correct.

5 MR. SWARTZ: And I would request that the Board incorporate by
6 reference the testimony and exhibits offered on September
7 15th, 1992 when this matter was first heard. The docket
8 number that was assigned to it at that time was VGOB-
9 92/09/15-0260.

10 MR. CHAIRMAN: Any objection to incorporating the evidence?
11 Okay. It shall be incorporated.

12 Q. (Mr. Swartz continues.) Mr. Gordon, if you would turn to
13 Exhibit B, is the only interest that is being affected
14 this one tract which was originally dealt with in the
15 original pooling order?

16 A. That's correct, just the one.

17 Q. So the interests of other parties in other tracts would
18 not go up or down. This is different than the case with
19 the Commonwealth that we just looked at?

20 A. That is correct. There is no change in this interest.

21 Q. The amendment that you would request here would be to the
22 effect that Vonda Gay Looney Sloan and James Edward Sloan
23 be added as claimants having an undivided interest in
24 tract 10?

25 A. That's correct.

1 Q. And the percentage that would be affected here is set
2 forth on Exhibit B and what is that percentage?
3 A. The percentage is .425 percent.
4 Q. Have you also submitted with this application that's
5 under consideration today an amendment or an additional
6 portion of Exhibit G, Page 4, to address the division of
7 interest in this unit?
8 A. Yes, I have.
9 Q. Other than Exhibit B and the division of interest --
10 Exhibit G, Page 4, are the rest of the numbers in terms
11 of the percentages, paneling the unit, the development
12 dollars, the unit costs, are they the same exhibits and
13 have the money amounts remained the same since this
14 matter was last considered by the Board?
15 A. They have remained the same. That is correct.
16 MR. SWARTZ: That's all I have on this unit.
17 MR. CHAIRMAN: Are you leaving Leslie Looney in? What's
18 happening with that?
19 MR. GORDON: Again, just as we did before, I would recommend
20 to the Board that we leave her there and that this be a
21 dual claimant.
22 MR. SWARTZ: Marty, do you have a title opinion now?
23 MR. WIRTH: Yes, sir.
24 MR. SWARTZ: Would you state your name?
25 MR. WIRTH: Martin E. Wirth.

1 MR. SWARTZ: Would you request that Leslie Looney be dismissed
2 at this point?
3 MR. WIRTH: That is correct. That is the mother of the wife
4 that we are now seeking to pool.
5 MR. SWARTZ: And you're relying on a title opinion that you
6 have obtained to that affect?
7 MR. WIRTH: That is correct.
8 MR. CHAIRMAN: Okay. This Exhibit B, should it be amended
9 Exhibit B for the record?
10 MR. SWARTZ: I don't know because it's -- the original with
11 regard to this petition -- I don't know. If you want us
12 to call it --
13 MS. RIGGS: Supplemental.
14 MR. SWARTZ: Supplemental or something?
15 MR. CHAIRMAN: Something that will keep the trail clear.
16 MR. GORDON: Well, you've got the separate VGOB docket number
17 on it. We've discussed this Tom's office a number of
18 times on how we do track this. Whatever you all want us
19 to do, we'll be happy to do it.
20 MR. CHAIRMAN: I agree with -- the docket number should
21 actually leave the trail that's needed.
22 MR. SWARTZ: If you would prefer in the future that we call it
23 a supplemental we'll attempt to do that if that helps.
24 MS. RIGGS: Just supplement to Exhibit B.
25 MR. SWARTZ: Right.

1 MR. CHAIRMAN: Okay. Any other questions, members of the
2 Board? Do you have anything further, Mr. Swartz?

3 MR. SWARTZ: No, I don't.

4 (Witness stands aside.)

5 MR. KELLY: I'd move the petition be approved as submitted.

6 MR. CHAIRMAN: A motion to approve.

7 MR. EVANS: Second.

8 MR. CHAIRMAN: A motion to approve and a second. Any further
9 discussion? If not, all in favor signify by saying yes.
10 (ALL AFFIRM.) Opposed say no. (NONE.) It's a unanimous
11 decision.

ITEM XVI, XVII

MR. CHAIRMAN: The next item on the agenda is a petition for force pooling by OXY, USA, Incorporated for unit V-20, docket number VGOB-93-01/19-0310.

MR. SWARTZ: Again, Mark Swartz and Howard Salisbury appearing for Buchanan Production Company and OXY, USA. We discussed this this morning at least with regard to unit B-20. I would request that the Board allow us to continue both 93/01/19-0310 and the next item on the docket 91/01/19-0311 which is unit V-21. Allow us to continue these until next month's hearing. Mr. Gordon, is it title issues that have arisen that causes you to ask for this continuance?

MR. GORDON: Yes. The title that has come in we will probably be submitted a whole new plat. We do have some new title that has presented itself.

MR. CHAIRMAN: Is there anyone here that has any problem with the continuance? Anyone who wishes to address the Board in these two matters? Any questions, members of the Board.

MR. SWARTZ: If I might interrupt for one -- is 30 days going to be enough or do you need 60 days?

MR. GORDON: Let's defer that to the land manager.

MR. SWARTZ: Marty, would you need 60 days maybe to get the

1 title squared away or can you do it in 30 days?
2 MR. WIRTH: Can I refer it to my title attorney Tim?
3 MR. SWARTZ: Tim.
4 MR. SCOTT: I'd say 60 days.
5 MR. SWARTZ: If I could amend my request to -- that would be
6 the March hearing. If we could continue it to the March
7 hearing.
8 MR. CHAIRMAN: This is for both V-20 and V-21?
9 MR. SWARTZ: Correct. Because we're going to obviously
10 republish and mail.
11 MR. FULMER: With regards to the V-20 this amendment was
12 received on January 11th. This goes to each member.
13 MR. SWARTZ: And you can probably draw a line through it right
14 now on the theory that you're going to get another one.
15 MR. CHAIRMAN: Yeah. That's what it sounds like. It's going
16 to change, right?
17 MR. GORDON: That amendment is cleaning up addresses and
18 names.
19 MR. MCGLOTHLIN: In 60 days will we be receiving a new
20 petition all together or --
21 MR. SWARTZ: It will be amended I would suspect.
22 MR. CHAIRMAN: Okay. They're continued to the March hearing
23 without objection.
24 MR. SWARTZ: Thank you.
25

1 ITEM XVIII

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3 MR. CHAIRMAN: The next item on the agenda will be docket
4 number VGOB-93/01/19-0312 and we'll take a five minute
5 break.

6 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)

7 MR. CHAIRMAN: The next item on the agenda is a petition for
8 the establishment of a drilling unit and force pooling
9 for EH-84 by Virginia Gas Company. This is docket number
10 VGOB-93/01-19-0312. We would ask the parties that wish
11 to address the Board on this matter to come forward at
12 this time.

13 MR. MULLINS: Mr. Chairman, my name is Tom Mullins. I'm an
14 attorney with the Street Law Firm in Grundy, Virginia and I'm
15 here today representing Virginia Gas Company. We have as
16 witnesses today Mr. Brad Swanson.

17 MR. CHAIRMAN: Anyone else that wishes to address the Board on
18 this matter? The record will show there are none. You
19 may proceed.
20

21 BRADLEY L. SWANSON

22 a witness who, after having been duly sworn, was examined and
23 testified as follows:
24
25

DIRECT EXAMINATION

BY MR. MULLINS:

Q. State your full name, please.

A. My name is Bradley L. Swanson.

Q. What do you do for a living?

A. I'm a land agent for Virginia Gas Company.

Q. How long have you been a land agent?

A. With Virginia Gas Company for the last five years.

Q. Did you have any prior experience in the oil and gas industry?

A. Yes, I did.

Q. What was that experience?

A. I worked for Bartlett Energy in the early eighties in the same capacity.

Q. And where was that?

A. It was in southwest Virginia.

Q. Have you testified before this Board on prior occasion?

A. I have.

Q. Was your testimony accepted as expert testimony?

A. Yes, it was.

MR. MULLINS: I'd like to ask at this time that he be recognized as an expert witness.

MR. CHAIRMAN: Any objections? You may proceed.

Q. (Mr. Mullins continues.) Are you familiar with the

1 application filed by Virginia Gas Company for the unit
2 designated as EH-84?

3 A. I am.

4 Q. Is Virginia Gas Company seeking to force pool the
5 interest in EH-84 identified on the plat filed as part of
6 the application?

7 A. That is correct.

8 Q. Has notice been sent to the interested parties by
9 certified mail, return receipt requested?

10 A. Yes.

11 Q. Have copies of the mail receipts or proofs of mailing
12 been filed with the Board?

13 A. They have.

14 Q. What is the size of the unit?

15 A. It's 125.59 acres.

16 Q. How much of the unit is leased?

17 A. 89.23 percent.

18 Q. Are there any parties that you want the Board to dismiss
19 that have been leased since you've filed your applica-
20 tion?

21 A. Yes, there are.

22 Q. Would you identify those parties, please?

23 A. Gary L. Colley, Eula Gaye King, Wanda Flemming, Grayson
24 Deel, Kit Sykes, Ray Sutherland and Madge Counts Max-
25 field.

1 Q. Who owns the drilling rights on this?
2 A. Virginia Gas Company.
3 Q. Is this a conventional gas well?
4 A. Yes, it is.
5 Q. What formations are you asking to be force pooled?
6 A. The Berea, the Wier, the Max, Big Line and Raven Cliff.
7 Q. What is the proposed depth of this well?
8 A. This well was drilled to 4,906 feet.
9 Q. And the well has been drilled?
10 A. That's correct.
11 Q. Have you attempted to contact each party concerning an
12 agreement prior to filing this application?
13 A. We have.
14 Q. What efforts were made and what were those results?
15 A. We contacted the parties by phone and by direct contact
16 and in July we sent them all leases by certified mail.
17 Q. What are the terms of Virginia Gas' leases?
18 A. Our standard terms are one-eighth royalty, \$5 per year on
19 a five year lease. In the case of this property the
20 interest was so small because of the number of heirs that
21 we agreed to pay a minimum of \$20 per signee.
22 Q. As assigning bonus?
23 A. As assigning bonus, correct.
24 Q. As an exhibit to the application is there a list naming
25 the parties not leased?

1 A. There is.
2 Q. What's that exhibit?
3 A. It's listed at Exhibit C.
4 Q. You've mentioned the names of several people that you've
5 leased. Do you want those names stricken from that list?
6 A. Correct.
7 Q. Was due diligence used to locate these parties?
8 A. It was.
9 Q. Whose interest in drilling rights are being sought to be
10 force pooled here today?
11 A. The parties listed on Exhibit C.
12 Q. Are you asking that Virginia Gas Company be named as the
13 drilling operator in unit EH-84?
14 A. That's correct.
15 Q. Was an AFE prepared for this drilling unit?
16 A. It was.
17 Q. Was it prepared by somebody knowledgeable in the costs
18 and operations of this type of well?
19 A. That's correct.
20 Q. Now, this well has been drilled, correct?
21 A. True.
22 Q. Do you have any harder information concerning the costs
23 developed since the AFE was prepared and filed than what
24 is reflected on the AFE?
25 A. The AFE was filed on 319,520 and I believe that the

1 actual cost of the well is going to be very close to
2 303,735.
3 Q. That's figures as they --
4 A. As they appear right now.
5 MR. CHAIRMAN: A couple of points at this stage of the
6 questioning. The copy that we have, Exhibit F, is
7 unsigned and we would need to refile that with actual
8 expenditures that you have signed and dated. And also
9 the other exhibits that you've proposed to amend we'd
10 need those refiled -- the amended exhibits.
11 MR. MULLINS: All right, sir. We'll file those post hearing
12 if that's acceptable.
13 MR. CHAIRMAN: That's fine.
14 Q. (Mr. Mullins continues.) Do any amounts need to be
15 escrowed by the Board?
16 A. No.
17 Q. What is the estimated production over the life of this
18 well?
19 A. .5 BCF.
20 Q. Does Virginia Gas have a blanket bond as required by
21 statute to cover the plugging and reclamation costs?
22 A. Yes.
23 Q. Are you asking on behalf of Virginia Gas Company that the
24 Board establish a unit around EH-847
25 A. Yes.

1 MR. MULLINS: I don't believe I have any other questions.
2 MR. CHAIRMAN: Questions, members of the Board?
3 MR. MCGLOTHLIN: You published the notice in the Bristol
4 paper?
5 THE WITNESS: I believe that to be correct.
6 MR. MCGLOTHLIN: Do you find that that is adequate service for
7 the application for -- publishing in the local paper --
8 THE WITNESS: I really think that the Bristol paper has
9 probably wider circulation than any paper in the area.
10 MR. MCGLOTHLIN: Thank you.
11 MR. CHAIRMAN: Any other questions?
12 (Witness stands aside.)
13 MR. EVANS: I make a motion that we accept the petition as
14 presented with the amendments to be forthcoming.
15 MR. CHAIRMAN: Motion to approve subject to the amendments.
16 MR. KELLY: Second.
17 MR. CHAIRMAN: A motion and a second. Any further discussion?
18 If not, all in favor signify by saying yes. (ALL
19 AFFIRM.) Opposed say no. (NONE.) It's a unanimous
20 decision.
21 MR. FULMER: Does the Board wish to set a deadline for the
22 amendments to be submitted?
23 MR. MULLINS: What time will the Board like and we'll get that
24 done?
25 MR. CHAIRMAN: Is ten days reasonable?

1 MR. MULLINS: Fine.

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3 ITEM XIX

4 MR. CHAIRMAN: The next item on the agenda is a petition for
5 the establishment of a drilling unit and force pooling
6 for EH-102. This is docket number VGOB-93/01/19-0313.
7 We'd ask the parties that wish to address the Board in
8 this matter to come forward at this time.

9 MR. MULLINS: Mr. Chairman, again Tom Mullins on behalf of
10 Virginia Gas. We're here today with Mr. James Rasnick as
11 a witness.

12 MR. CHAIRMAN: The record will reflect that there's no other
13 parties wishing to address the Board. You may continue.

14 JAMES RASNICK

15 a witness who, after having been duly sworn, was examined and
16 testified as follows:

17
18 DIRECT EXAMINATION
19

20 BY MR. MULLINS:

21 Q. I'd like for you to please state your name.

22 A. James D. Rasnick.

23 Q. What do you do for a living, sir?

24 A. I'm a land agent for Virginia Gas Company.

25 Q. How long have you been a land agent for Virginia Gas

1 Company?

2 A. Three years.

3 Q. What are your duties as land agent?

4 A. Lease maintenance management, title work, various items
5 oil and gas related.

6 Q. Have you testified before this Board on prior occasion?

7 A. Yes, I have.

8 Q. Have you testified as an expert witness before this Board
9 on behalf Virginia Gas Company or Edwards & Harding
10 Petroleum Company?

11 A. Yes, I have.

12 MR. MULLINS: At this time I'd like to ask that Mr. Rasnick be
13 recognized as an expert witness.

14 MR. CHAIRMAN: Any objections? You may proceed.

15 Q. (Mr. Mullins continues.) Sir, are you familiar with a
16 well designated as EH-108?

17 A. Yes, I am.

18 Q. Are you familiar with the application filed on behalf of
19 Virginia Gas Company for the drilling unit designated as
20 EH-108?

21 A. Yes.

22 Q. Is Virginia Gas Company seeking to force pool the
23 interest in EH-108 as identified on the plat filed as
24 part of the application?

25 A. Yes.

1 Q. Has Virginia Gas caused notice to be sent by certified
2 mail, return receipt requested to the interested parties?
3 A. Yes.
4 Q. Have copies of the mail receipts and proof of mailings
5 been filed with the Board?
6 A. Yes.
7 Q. What's the size of this unit?
8 A. It's 125.66 acres.
9 Q. How much of the unit do you have leased and how much is
10 outstanding?
11 A. Under lease we have 32.32 percent interest.
12 Q. And how much is outstanding?
13 A. 67.68 percent.
14 Q. Are there any parties that you have leased since filing
15 your application that you would like to have stricken?
16 A. No.
17 Q. Who owns the drilling rights in this area?
18 A. Virginia Gas Company.
19 Q. Is this a conventional gas well?
20 A. Yes.
21 Q. What formations are you asking the Board to force pool?
22 A. The Burea, the Wier, Max and Big Line, Devonian Shell and
23 Raven Cliff.
24 Q. What is the proposed depth of this well?
25 A. It's 4,900 feet as drilled.

1 Q. Have you attempted to contact each parties concerned
2 prior to the filing of the application?
3 A. Yes.
4 Q. As an exhibit to the application is there a list naming
5 the parties not leased?
6 A. Yes.
7 Q. How is that designated as part of the application?
8 A. It's designated as Exhibit C in the application.
9 Q. And again you don't want anybody dismissed from that
10 exhibit or stricken?
11 A. No.
12 Q. Was due diligence used to locate the parties?
13 A. Yes.
14 Q. Whose interest and drilling rights are being sought to be
15 force pooled here today by the Board?
16 A. Those parties listed on Exhibit C of the application.
17 Q. Is Virginia Gas Company requesting to be named as the
18 drilling operator of unit 108?
19 A. Yes.
20 Q. And it's asking that a drilling unit be established
21 designated as EH-108?
22 A. Yes.
23 Q. Was an AFE prepared?
24 A. Yes.
25 Q. What's the exhibit?

1 A. It's Exhibit F of the application.

2 Q. Was it prepared by someone knowledgeable in the costs and
3 operation of wells of this type?

4 A. Yes.

5 Q. Are you familiar with this AFE?

6 A. Yes.

7 Q. Based upon your experience in the gas industry is this a
8 reasonable AFE?

9 A. Yes. I might add that our actual drilling costs in
10 response to the AFE are inclined to be at or about
11 \$270,000.

12 Q. Is that based on some preliminary information that you
13 have?

14 A. That's correct.

15 Q. Are you willing to provide the Board with an amended AFE
16 reflecting those figures?

17 A. Yes.

18 Q. Can you do what within fifteen days from the date of this
19 hearing if favorable action is taken by the Board?

20 A. Yes.

21 Q. Does any amount need to be escrowed by the Board?

22 A. Yes.

23 Q. What interests need to be escrowed?

24 A. 67.68 percent of the unit.

25 Q. And that's the parties identified on Exhibit C?

1 A. That's correct.

2 Q. Does Virginia Gas have a blanket bond as required by
3 statute to cover the plugging and reclamation costs?

4 A. Yes.

5 MR. MULLINS: Mr. Chairman, I don't believe I have any other
6 questions of this witness.

7 MR. CHAIRMAN: Questions, members of the Board?

8 MR. EVANS: I've got one. Who's Alfred Compton and Blanche
9 Sutherland? On Exhibit C my copy has three estates
10 mentioned. It says see Exhibit E. But then below that
11 it has Alfred Compton and Blanche Sutherland, et al.

12 THE WITNESS: Alfred Compton is at the top of the plat.

13 MR. MULLINS: Any they are unleased also?

14 THE WITNESS: Right.

15 MR. EVANS: Okay. When I looked at this I wasn't quite sure
16 of what I was looking at because when I looked back at
17 Exhibit E again it had the same unlocated -- but I see
18 what you've done. It's a combination -- you know who
19 Compton and Sutherland are. The other three you don't
20 know.

21 MR. MULLINS: Right. We had addresses for those parties.

22 MR. EVANS: I'm just slow. Forgive me.

23 MR. MCGLOTHLIN: Could you refresh my memory on the minimum
24 amount of lease hold you have to have before you can
25 force pool.

1 MR. CHAIRMAN: 25 percent.

2 MR. McGLOTHLIN: Thank you.

3 MR. EVANS: I have another quick question. I see that there
4 is 67.68 percent that's unleased. Do you have a break
5 down anywhere in here that I missed as to percentage for
6 Mary Anderson, (Inaudible.) Anderson, Chrisy Anderson
7 estate, that type of --

8 THE WITNESS: I have some amended plats here that reflect a
9 discrepancy in the ownership of the oil and gas on those
10 properties. We have ten copies for the Board.

11 MR. CHAIRMAN: On the application prior to this and on this
12 application another thing we like to see is the schedule
13 that has the percentage break down of interest for each
14 of the parties with the pay out estimate.

15 MR. MULLINS: That won't be a problem.

16 MR. McGLOTHLIN: Mr. Chairman, I might recommend that that be
17 -- if we approve this application that that might be one
18 of the stipulations for the escrow agent.

19 MR. CHAIRMAN: Any other questions?

20 MR. EVANS: I'm about half way lost, but I'll try and catch
21 up. The changes in the plat, obviously there's -- could
22 you maybe for my sake go through and tell me what it is
23 I'm actually looking at and the differences between --

24 THE WITNESS: In the amended plat that we just prepared, in
25 our title report there's an indication of title failure.

1 We can't certify to that or anything of that nature, but
2 we have leases from the apparent oil and gas owners and
3 then we don't have leased from these people way back in
4 the 1890's who's title attorneys indicated they may own
5 it.

6 MR. MULLINS: You have leases from Harry and Corbert Anderson,
7 is that right?

8 THE WITNESS: Yes.

9 MR. MULLINS: And then the lawyers who did the title report
10 indicated that they may or may not own it and they
11 refused to certify titles to these individuals?

12 THE WITNESS: Exactly.

13 MR. MULLINS: And that's the reason you're asking for it to be
14 force pooled -- or a big reason?

15 THE WITNESS: And escrowed, yes.

16 MR. EVANS: Okay. I was just trying to get clear on what the
17 differences were I was looking at here.

18 MR. MCGLOTHLIN: Mr. Mullins, is that going to kind of give us
19 dual ownership on -- the possibility of a dual ownership
20 when it goes into escrow?

21 MS. RIGGS: Conflicting claims.

22 MR. MULLINS: Conflicting claims, yeah.

23 MR. CHAIRMAN: So this exhibit that you just handed out is an
24 amended Exhibit A, right, for the record?

25 THE WITNESS: Right.

1 MR. MULLINS: You probably ought to designate as A-1 and
2 retain both A and A-1 because --
3 THE WITNESS: We can't say which one is the correct plat.
4 MR. CHAIRMAN: That was going to be my next question. That's
5 why I was asking because it is different.
6 MR. HARRIS: I notice also there's a note in the upper right
7 hand corner that says, "this unit may contain either
8 wholly or partially the 3.25 acre tract and/or a 14.25
9 acre tract for which descriptions are not available."
10 I'm not sure I understand what that means.
11 THE WITNESS: There is reference in the title report to a 3.25
12 acre tract and also a 14.25 acre tract which title to
13 those two tracts would be the same people involved here.
14 However, the engineers were unable to determine where
15 these two tracts lay due to the fact there was no
16 description whatsoever.
17 MR. HARRIS: But you're assuming it lays within your unit?
18 THE WITNESS: We're assuming that it could be in the unit or
19 it may not. But the ownership of that acreage is still
20 the same parties, the same people that's listed on the
21 plat.
22 MR. EVANS: You just couldn't plot where it was There was no
23 description on it.
24 THE WITNESS: No. There was no description whatsoever. There
25 wasn't even a description from the locust post to the

1 popular tree.

2 MR. OWNERSHIP: Mr. Rasnick, on the location of the well do
3 you have that agreed by Harry and Corbed Anderson on the
4 location?

5 THE WITNESS: Yes, sir.

6 MR. MCGLOTHLIN: Okay.

7 THE WITNESS: Yes. And we have an oil and gas lease from
8 those parties should they be determined to own the oil
9 and gas.

10 MR. MCGLOTHLIN: They own the surface. There's no --

11 THE WITNESS: No question.

12 MR. MCGLOTHLIN: Okay.

13 MS. RIGGS: When we get the amended exhibit will it show the
14 division of interest that when applied toward the
15 estimated cost of completion with their cost of their
16 participation so that they can clearly understand how to
17 compute things --

18 MR. MULLINS: We can do that.

19 MS. RIGGS: -- by party?

20 MR. CHAIRMAN: That's what we need. That way the applicants
21 can see exactly what participation means to them.

22 MR. KELLY: If there's nothing else I move that we accept the
23 petition with the stipulations of submission of the data
24 requested.

25 MR. CHAIRMAN: We have a motion to approve and the

1 amendments within 15 days.
2 MR. EVANS: Second.
3 MR. CHAIRMAN: A motion and a second. Any further
4 discussion? If not, all in favor signify by saying yes.
5 (ALL AFFIRM.) Opposed say no. (NONE.) Unanimous
6 approval.
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ITEM XX

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3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the establishment of a drilling unit and force pooling
5 for EH-114. This is docket number VGOB-93/01-19-0314.
6 We would ask the parties that wish to address the Board
7 in this matter to come forward, please.

8 MR. MULLINS: Mr. Chairman, again my name is Tom Mullins and I
9 represent Virginia Gas. At this time we would like to ask
10 the Board to continue unit EH-114 docket number 93/01/92-
11 0314.

12 MR. CHAIRMAN: We have a motion for continuance. Does anyone
13 here present today have any problem with continuing that?
14 It that till next month?

15 MR. MULLINS: Yes.

16 MR. CHAIRMAN: Till next month? Any opposition to it's
17 continuance? Any problem with that, members of the
18 Board?

19 MR. MCGLOTHLIN: Is there a reason for continuing it?

20 MR. RASNICK: We're somewhat unprepared. Some additional
21 investigation on some of the parties is what we would
22 like to do before we come forward before the Board.

23 MR. CHAIRMAN: All right. This will be carried forward to the
24 February Board hearing.

25 MR. HARRIS: Mr. Chairman, may I ask a question about the use

1 of the Bristol paper. I know that Mr. McGlothlin
2 mentioned this earlier. Do we have any guidelines by
3 what paper to use because I'm not sure if -- and I think
4 I have the same concern that he does. Even though the
5 Bristol paper is quite widely read in this area I'm
6 wondering if the local paper wouldn't be more appropriate
7 to give the notices in. I'm not directing this at anyone
8 in particular. This is just a topic for discussion.

9 MR. CHAIRMAN: The Board regulations designate the newspaper
10 with a large general circulation -- with a general
11 circulation in the area affected.

12 MR. RASNICK: May I expand on that a little bit?

13 MR. CHAIRMAN: Yes, please.

14 MR. RASNICK: The department itself done studies in that area
15 and there are other divisions under the requirement of
16 notice and so forth and this is why that that's circulat-
17 ed all the operators (Inaudible.) Also in local papers
18 the only problem you have is they only publish maybe once
19 a week which would not get them within their deadline for
20 the publication requirements under the statute. So
21 normally the Bristol paper and Bluefield paper or the
22 Kingsport paper is used.

23 MR. CHAIRMAN: Well, certainly we encourage people in the
24 interest of reaching out and identifying all parties to
25 notice in any form or fashion that would have the maximum

1 coverage, but in order to meet the publication deadline
2 the dailies are about the way to do it.
3 MR. MULLINS: Okay. I don't think that there were any unknown
4 in that particular well.
5 MR. RASNICK: Just the Anderson heirs.
6 MR. CHAIRMAN: Okay. That will be continued to the February
7 hearing.
8 MR. MULLINS: Thank you, sir.

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ITEM XXII

MR. CHAIRMAN: The next item on the agenda --

MR. MULLINS: Maybe just to clear up, Mr. Chairman, number XXII is skipping ahead one and we're going to be withdrawing that application -- maybe just to save some foot work of running back and forth.

MR. CHAIRMAN: That's where I was going next, Item XXII.

MR. MULLINS: I'm sorry.

MR. CHAIRMAN: EH-117, petition for establishment of a drilling unit and force pooling, docket number VGOB-93/01/19-0316. Anyone here today that wishes to address the Board in this matter? Okay. Any problems with the withdrawal? Okay.

MR. MULLINS: Thank you. Let's take a five minute break. The next item that I plan to call on the agenda will be Item II which a petition for the force pooling of V-2532, docket number VGOB-92/12/15-0296.

(AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)

ITEM II

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3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the force pooling of V-2532 and this is docket number
5 VGOB-92/12/15-0296. We would ask the parties that wish
6 to address the Board in this matter to come forward at
7 this time.

8 MR. COUNTS: Mr. Chairman, Richard Counts appearing on behalf
9 of Equitable Resources, the applicant in this matter.
10 Also appearing on behalf of Equitable today are Sandy
11 Able, staff counsel at Equitable Resources, and Mr. Jim
12 Kiser with Hunter, Smith & Davis from Kingsport. The
13 witnesses I'll be calling are Bob Dahlin from geology
14 standpoint and Mr. Dennis Baker from land standpoint.
15 Effectively this is a unit where we have about 90 percent
16 of the acreage already under lease and we're attempting
17 to force the remainder of those unleased interests.

18 MR. CHAIRMAN: Are there any other parties in the room that
19 wish to address the Board in this matter? The record
20 will show there are none. You may proceed.

21 MR. COUNTS: I'd like to call as my first witness Mr. Dennis
22 Baker.
23
24
25

1 DENNIS BAKER

2 a witness who, after having been duly sworn, was examined and
3 testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. COUNTS:

8 Q. Mr. Baker, who are you employed by and in what capacity?

9 A. Equitable Resources Exploration as staff land manager and
10 leasing supervisor.

11 Q. Mr. Baker, have you previously appeared and testified
12 before the Oil and Gas Conservation Board and has your
13 testimony as an expert witness been accepted in these
14 matters?

15 A. Yes.

16 MR. COUNTS: Mr. Chairman, I move that Mr. Baker be admitted
17 to testify as an expert witness in this matter.

18 MR. CHAIRMAN: Any objection? You may proceed.

19 Q. (Mr. Counts continues.) Mr. Baker, does Equitable own
20 drilling rights involved unit V-2532?

21 A. Yes, they do.

22 Q. Does this proposed unit depicted at Exhibit A to the
23 application include all acreage within a 1,320 foot
24 radius of proposed well V-2532?

25 A. Yes, sir.

1 Q. Would you indicate for the Board what the interest of
2 Equitable is in this unit?
3 A. Equitable has 89.45 percent interest under lease.
4 Q. And are you also familiar with the ownership of drilling
5 rights of parties other than Equitable underlying this
6 unit?
7 A. Yes, I am.
8 Q. Would you indicate for the Board what the status of that
9 interest is and what percentage it represents?
10 A. We have 10.55 percent remaining unleased at this point.
11 Q. Mr. Baker, from a due diligence standpoint prior to the
12 filing of the application were efforts made to contact
13 each of the respondents in an attempt to work out an
14 agreement regarding development of these units?
15 A. Yes.
16 Q. Subsequent to filing the application have you continued
17 to attempt to reach an agreement with the respondents
18 listed in Exhibit B?
19 A. Yes, we have.
20 Q. As a result of these efforts do you wish to revise
21 Exhibit B?
22 A. Yes, I do.
23 Q. Would you indicate for the Board those revisions?
24 A. On Page 1 of Exhibit B, the last individual listed,
25 Jerlene Maggard is now leased to EREX. On Page 2,

1 Exhibit B, second from the top, Delphia Calhoun. Second
2 from the bottom --

3 MR. MCGLOTHLIN: You may need to start from the beginning.

4 MR. CHAIRMAN: You need to start on Page 1 again.

5 A. (The witness continues.) On Page 1 the last name on the
6 list, Jerlene Maggard we'd like to dismiss. Page 2,
7 second from the top, Delphia Calhoun. Second from the
8 bottom Earnest Lee Maggard. The last one on the list,
9 Junior Ray Maggard. Page 3, the name is listed as Faye
10 Maggard. The new name is Leda Faye Maggard Semore is to
11 be dismissed. This is about middle ways down in the
12 page.

13 MR. MCGLOTHLIN: Are you dismissing them being leased or --

14 THE WITNESS: They are leased to EREX.

15 MR. COUNTS: Revising the exhibit to indicate that they are
16 now leased parties.

17 MR. MCGLOTHLIN: Well, the exhibit shows that they're leased.

18 THE WITNESS: The revised exhibit does, yes, sir.

19 MR. CHAIRMAN: Are you dismissing Billy Semore as well as
20 Faye --

21 THE WITNESS: Yes. That's the lady's husband.

22 MR. EVANS: Hold on. I am thoroughly confused. Are these the
23 heirs of Joseph L. and Desta Maggard as submitted on your
24 original Exhibit B in the original application? Jerlene
25 Maggard -- I've got Pages 1 and 7 of the original

1 application. I'm trying to find where these other people
2 are listed.

3 THE WITNESS: Jerlene Maggard is one of the heirs of Joseph
4 and Desta.

5 MR. EVANS: Okay.

6 MR. HARRIS: But they were never listed in the original --

7 THE WITNESS: Right. I believe the original application had
8 heirs of Joseph and Desta Maggard in tract number six.

9 MR. COUNTS: As a result of subsequent efforts to identify
10 those parties these additional parties were discovered.

11 MR. EVANS: Are these all going to be heirs of Joseph and
12 Desta?

13 THE WITNESS: Yes.

14 MR. EVANS: Obviously there are a bunch of them?

15 THE WITNESS: Yes, there is. Revised Exhibit B that you have
16 has all of the individuals listed and their respective
17 interest.

18 MS. RIGGS: It's my understanding that your Exhibit B lists
19 all parties entitled to notice, leased and unleased, and
20 you're not actually dismissing anybody but changing the
21 category from unleased to leased?

22 MR. COUNTS: That is correct.

23 MS. RIGGS: And they will remain, it's just that the unleased
24 will be the only ones entitled to an election?

25 MR. COUNTS: Correct.

1 A. (The witness continues.) Okay. On Page 3, middle way
2 down, Leda Faye Maggard Semore and her husband Billy.
3 Page 4, partially way down, about the fifth one down is
4 Leon Calhoun and his wife Ellen. Page 5, Stella Maggard
5 is now leased to EREX and we need to delete the name of
6 Edith Walk who is listed as the daughter of John Maggard.
7 This is at the top of Page 5. John R. Maggard, heirs at
8 law, should show Stella Maggard. The original I believe
9 had the name of Edith Walk and we're deleting her name
10 due to her not having an interest. The next one is John
11 Hunsucker now leased to EREX. Billy Freeman now leased
12 to EREX. Bishop Hunsucker now leased to EREX. Wendell
13 Hunsucker is now leased. Jerry Monroe Hunsucker is now
14 leased. Claudette Slouth is now leased. Johnny Hunsuck-
15 er. Jr. is now leased to EREX. Page 6, at the top of the
16 page, Johnny Calhoun is now leased to EREX. Tract
17 number nine, George Barnett, Jr. is now leased to EREX.
18 Page 7, third from the bottom, Richard Mahaffey is now
19 leased to EREX. Donald Mahaffey is now leased to EREX.
20 Page 8, third from the top, Joe Roberts is now leased.
21 The fourth name down from that, George H. Roberts is now
22 leased. Page 9, top of the list, Lillian Stallard is now
23 leased. Page 12, Theresa M. Peters is now leased to
24 EREX.

25 Q. Mr. Baker, does your revised Exhibit B reflect all these

1 changes that you've just indicated for the Board?

2 A. Yes, it does.

3 MR. COUNTS: Mr. Chairman and members of the Board, I might
4 make a comment at this point in time, too, that I think
5 it's important to recognize from the Board's prospective
6 and also to recognize it in terms of EREX methodology.
7 Obviously before filing an application the applicant has
8 to indicate that they have complied with due diligence
9 requirements in terms of attempting to locate each and
10 every one of these individuals. We've attempted to
11 negotiate with respect to development of this particular
12 unit. I think it's pretty clear in this particular
13 application that not only has this been done as of the
14 date of the application but that, in fact, Equitable
15 continues trying to contact these parties after the
16 application was filed. You can tell by the significant
17 number of parties that are now changed from unleased
18 interest to leased interest that this effort continues
19 well after the application date and, in fact, probably
20 has updated within the last two days. So Equitable does
21 continue to comply with due diligence standards in terms
22 of trying to locate. They don't just stop once the
23 application is filed. They don't just stop and try to
24 secure leases. They continue with this effort in order
25 to assure these parties that their due process rights

1 will be protected. Are there any further questions on
2 the revised exhibit?

3 MR. MCGLOTHLIN: On Page 12, Carl Roberts and Robert M.
4 Roberts, incompetent, could you shed little light on
5 these two --

6 THE WITNESS: Mr. Wade Roberts has been appointed committee
7 for both Carl Roberts and Robert M. Roberts. We've been
8 in touch with Mr. Wade Roberts as committee for the
9 individuals.

10 MR. COUNTS: And notice was served on the committee for these
11 individuals.

12 MR. MCGLOTHLIN: Okay. I just wanted to make sure.

13 MR. HARRIS: I have a question for Mr. Baker. Page 6 and 12
14 of the revised Exhibit B, Johnny Calhoun husband has
15 courtesy for interest within units and gross acreage. I
16 don't understand what that means.

17 THE WITNESS: He basically does not have invested interest in
18 the property as far as interest in gross acreage. He was
19 the husband of Alice Maggard Calhoun.

20 MR. HARRIS: Is courtesy a legal term? I mean --

21 MR. COUNTS: Mr. Harris, it's out intention to list as
22 respondents all parties that may have an interest in the
23 drilling unit. As noted I think earlier on an OXY
24 exhibit today they indicated they had a title problem and
25 although they didn't feel that the party had an interest

1 they nonetheless listed that party as a respondent. As a
2 result the operator can go ahead and commence operations
3 but they can suspend those proceeds and provide for 1 or
4 required title action or whatever. But nonetheless we're
5 going to make sure that all possible interests are named
6 as party respondents with respect to our application.

7 MR. HARRIS: So this is basically saying that?

8 MR. COUNTS: That is correct. Yes, sir. Otherwise we have to
9 come back to you -- the pooling is still valid but we'd
10 have to come back and we'd have to pool any additional
11 interest that we subsequently discovered if we did not do
12 that on an individual by individual basis. I don't want
13 to clog your docket and Equitable doesn't want to pay me
14 for doing that. So that's why we're trying to do that.

15 MS. RIGGS: Do you have a clean copy of Exhibit B? I thought
16 you were doing dismissals and I marked on mine. The
17 revised one.

18 MR. COUNTS: Sure.

19 MS. RIGGS: Thank you.

20 MR. COUNTS: Mr. Chairman, I now have certain questions from a
21 due diligence standpoint also parties that are sought to
22 be force pooled, the manner of the pooling, and also
23 operatorship that I would like to request that for
24 purposes of facilitating these applications that would be
25 incorporated into the subsequent force pooling hearings

1 that I'll be going through. And I'll be requesting on
2 each of those that these items I'm now going to go
3 through be incorporated. If it please the Board, then
4 I'll go ahead and proceed.

5 MR. CHAIRMAN: Any problem with that? Proceed.

6 Q. (Mr. Counts continues.) Mr. Baker, were efforts made to
7 determine if the individual respondents were living or
8 deceased or their whereabouts and if deceased were
9 efforts made to determine the names and addresses and
10 whereabouts of the successors to any deceased individual
11 respondent?

12 A. Yes.

13 Q. In terms of trying to locate these parties, Mr. Baker,
14 did you check sources such as deed records, probate
15 records, treasurer's records, tax maps, etcetera?

16 A. Yes, we did.

17 Q. In your professional opinion was due diligence exercised
18 to locate each of the respondents named herein?

19 A. Yes, it was.

20 Q. Are the addresses set out in Exhibit B and particularly
21 the revised Exhibit B to the application the last known
22 addresses for the respondents?

23 A. Yes, sir. That's correct.

24 Q. With the exception of those parties which you are hereby
25 dismissing from this proceeding are you requesting that

1 this Board force pool all other interests listed at
2 Exhibit B?

3 A. Yes, we are.

4 Q. Does Equitable seek to force pool drilling rights of each
5 individual respondent if living and if deceased the
6 unknown successor or successors to any deceased individu-
7 al respondent?

8 A. That is correct.

9 Q. Is Equitable seeking to force pool drilling rights of the
10 person designated as trustee or committee if acting in
11 that capacity and if not acting in such capacity is
12 Equitable seeking to force pool the drilling rights of
13 the successor to each trustee or committee?

14 A. Yes. That is correct.

15 Q. Mr. Baker, are you familiar with the fair market value of
16 drilling rights in this unit and the surrounding area?

17 A. Yes, I am.

18 Q. Would you advise the Board as to what those terms are?

19 A. \$5 per acre consideration, five year term, one-eighth
20 royalty.

21 Q. And did you gain your familiarity by acquiring oil and
22 gas leases and other agreements in this unit here and in
23 the surrounding area?

24 A. Yes, we did.

25 Q. In your opinion do the terms you've testified to re-

1 present the fair market value of and the fair and
2 reasonable compensation to be paid for drilling rights
3 within this unit?

4 A. Yes, I do.

5 Q. Do you also recommend that the respondents listed in
6 Exhibit B and not dismissed at this hearing be allowed
7 the following options with respect to their ownership
8 interest within the unit; 1: Participation. 2; Cash
9 bonus of \$5 per net mineral acre plus a one-eighth of
10 eight-eighths royalty. Or 3: To participate as a carried
11 interest owner?

12 A. Yes.

13 Q. Do you also recommend that the order provide that
14 election of respondent be in writing and sent to the
15 applicant in care of Hunter, Smith & Davis, Post Office
16 Box 3740, Kingsport, Tennessee?

17 A. That is correct.

18 Q. Should this be the address for all communications with
19 the applicant concerning the force pooling order?

20 A. Yes, it is.

21 Q. Do you further recommend that the force pooling order
22 provide that if not written election is properly made by
23 respondent then such respondent should be deemed to have
24 elected a cash royalty option in lieu of participation?

25 A. Yes, sir.

1 Q. How much time from the date of the order should the
2 respondent have to file the written election?
3 A. 30 days.
4 Q. If the respondent elects to participate how much time
5 from the date of the order should the respondent have to
6 pay applicant for respondent's proportionate share of
7 well costs?
8 A. We request 30 days.
9 Q. Mr. Baker, would you like to revise that to 45 days from
10 the date of the mailing to request the share of respond-
11 ent proportionate well cost?
12 A. Yes, I would.
13 Q. Does Equitable expect a party electing to participate to
14 pay in advance that party's share of completed well cost?
15 A. Yes.
16 Q. How much time from the date of the order should the
17 applicant have to pay or tender any cash bonus becoming
18 due under the force pooling order?
19 A. 30 days.
20 MR. COUNTS: Let me make a change here that I failed to advise
21 Mr. Baker of. I apologize for that to Mr. Baker and to
22 the Board. I think that that's now consistent with the
23 Board's most recent order that that would be 60 days
24 following the date of the order and thereafter annually
25 on that date until production is received.

- 1 Q. (Mr. Counts continues.) Mr. Baker, do you recommend the
2 force pooling order provide that if respondent elects to
3 participate but fails to pay respondent's proportionate
4 share in well cost satisfactory to applicant for payment
5 of well cost then the respondent's election to partici-
6 pate shall be treated as having been withdrawn and void
7 and such respondent shall be treated as if no initial
8 election had been filed under the forced pooling order?
- 9 A. Yes.
- 10 Q. Do you further recommend that the order provide that
11 where a respondent elects to participate but defaults in
12 regard to the payment of well cost any cash sum becoming
13 payable to such respondent be paid within 60 days after
14 the last date on which such respondent could have paid or
15 made satisfactory arrangements for the payment of well
16 cost?
- 17 A. Yes.
- 18 Q. Do you recommend that the forced pooling order provide
19 that if respondent refuses to accept the cash bonus or
20 the cash bonus cannot be paid to a party for any reason
21 or there is a title defect in the respondent's interest
22 that the operator create an escrow account for the
23 respondent's benefit until the money can be paid to the
24 party or until the title defect is cured to the oper-
25 ator's satisfaction?

1 A. Yes.

2 Q. Mr. Baker, I am at long last thankfully able to ask you a
3 short question because I am about to run out of air. Who
4 should be named operator under the forced pooling order?

5 A. Equitable Resources Exploration.

6 MR. COUNTS: Mr. Chairman, I have no further questions of this
7 witness.

8 MR. CHAIRMAN: Any questions, members of the Board?

9 (Witness stands aside.)

10 MR. CHAIRMAN: You may call your next witness.

11 MR. COUNTS: Mr. Chairman, I'd now like to call Mr. Bob
12 Dahlin.

13

14 BOB DAHLIN

15 a witness who, after having been duly sworn, was examined and
16 testified as follows:

17

18 DIRECT EXAMINATION

19

20 BY MR. COUNTS:

21 Q. Mr. Dahlin, have you previously testified before the
22 Virginia Oil and Gas Conservation Board and have your
23 qualifications as an expert witness been accepted by the
24 Board?

25 A. Yes, I have.

1 MR. COUNTS: I move that Mr. Dahlin's testimony be accepted.

2 MR. CHAIRMAN: Any objections? All right. Go ahead.

3 Q. (Mr. Counts continues.) Do your responsibilities include

4 the lands involved herein and the surrounding area?

5 A. Yes, sir, they do.

6 Q. And are you familiar with Equitable's development of the

7 units involved herein and the applicant's proposed plan

8 of development?

9 A. I am.

10 Q. Mr. Dahlin, what's the total depth of the proposed

11 initial well under Equitable's plan of development?

12 A. Total depth would be 5,200 feet.

13 Q. And what formations would that effectively include?

14 A. We'll be producing from the Devonian Shells, Burea, Raven

15 Cliff, Wier, Max, and Big Line formation.

16 Q. And do you further request that all formations from the

17 surface to the ground to total depth drilled excluding

18 coalbed methane formations be covered by this order?

19 A. Yes, sir, I would.

20 Q. Will the initial well be at a legal location?

21 A. Yes, sir, it will.

22 Q. What are the estimated reserves of this unit?

23 A. We've assigned 500 million cubic feet of gas to this

24 drilling unit.

25 Q. Mr. Dahlin, are you familiar with the well costs for the

1 proposed initial unit well under Equitable's plan of
2 development?

3 A. Yes, sir, I am.

4 Q. And has an AFE been prepared or reviewed and revised
5 within the last 45 days and submitted to the Board?

6 A. It has.

7 Q. Was the AFE prepared by an engineer knowledgeable in the
8 preparation of AFEs and knowledgeable in regard to well
9 costs in this area?

10 A. Yes, sir, it was.

11 Q. Does this AFE represent a reasonable estimate of the
12 reasonable well costs for the proposed initial unit well
13 under Equitable's plan of development?

14 A. Yes, sir.

15 Q. Would you indicate for the Board what the estimated dry
16 hole costs are, sir?

17 A. Dry hole cost would be \$149,600.

18 Q. And would you also indicate completed well costs?

19 A. Completed well cost would be \$286,800.

20 Q. Mr. Dahlin, in your professional opinion will granting of
21 this application be in the best interest of conservation,
22 prevention of waste, and protection of correlative
23 rights?

24 A. Yes, sir, it would.

25 MR. CCUNTS: Mr. Chairman, I have no further questions of this

1 witness.

2 MR. CHAIRMAN: One thing that we don't have is a signed and
3 dated copy of the AFE. We'll need that. Did you prepare
4 it?

5 THE WITNESS: No, sir, I did not. It was prepared by our
6 engineering department.

7 MR. CHAIRMAN: We'll need to supplement the --

8 MR. COUNTS: You're saying you do not have a copy of the AFE?

9 MR. CHAIRMAN: I have a copy of the AFE. It's not signed.

10 MR. COUNTS: We will stipulate we'll provide that copy to you
11 within the next week.

12 MR. EVANS: Could you go back over the AFE total costs again
13 for VP-2532? Is that the one we're talking about?

14 THE WITNESS: Yes, sir. I have dry hole cost as \$149,600 and
15 a completed well cost of \$286,800.

16 MR. EVANS: Okay. Dry hole cost are?

17 THE WITNESS: \$149,600. You'll note the total on the first
18 page of our AFE under IDC drilling. The total is derived
19 from that figure plus the first total under Page 3
20 including items such as dry pipe, conductor pipe, that
21 type thing. The total of \$220,800 -- it's a cumulative
22 between that and the first figure I gave you.

23 MR. EVANS: So your dry hole costs are split out that way?

24 THE WITNESS: Yes, sir.

25 MR. EVANS: That's fine. The total was right but when you

1 looked at dry hole costs you went through it so quickly.

2 MR. COUNTS: Mr. Chairman, I might also indicate that -- I
3 haven't checked today with the respect to the regs on
4 this. I'm not sure that the regs require that we do
5 anything more than set out the completed well costs. But
6 it's our opinion that in order to be able to make an
7 election and afford due process that those parties have
8 to know the dry hold costs as well. That's why we split
9 those up.

10 MR. FULMER: They usually have those dry hole costs -- it's
11 usually set out in the application.

12 MR. COUNTS: It's an extremely important component that should
13 be set out in all applications.

14 MR. HARRIS: I have a question about the well location plat,
15 Exhibit A. It says preliminary and it's also stamped
16 revised. What do you expect the final plat to look like?
17 I mean, how different will it be from this?

18 MR. FULMER: It's Page 8 of the regs.

19 MR. COUNTS: Mr. Harris, I apologize for the confusion on
20 that. We do have revised and preliminary on that.
21 Often times in terms of these sites going through geology
22 and all the procedures down the line they end up being
23 preliminary, they end up being revised on numerous
24 occasions. This is however the final location for well
25 2532.

1 MR. MCGLOTHLIN: Mr. Counts, do you know where your access
2 road -- where it will be coming in?
3 MR. COUNTS: I will direct that one to Mr. Baker.
4 MR. MCGLOTHLIN: And also I noticed that there's two plat 4s
5 and beside 9 there's a circle with something in it.
6 MR. COUNTS: I've got a copy here. Basically the access
7 road's coming in off of State Route 620. If you would
8 like to see that topographic map I'll show it to you.
9 (Pause.)
10 MR. MCGLOTHLIN: Thank you. How much trouble would it be for
11 us to require that the oil and gas companies overlay
12 their well location maps on a -- superimpose it on a
13 topo?
14 MR. CHAIRMAN: We'd have to probably go back and revise our
15 regulations to do that.
16 MR. MCGLOTHLIN: Thank you.
17 MR. CHAIRMAN: Mr. Counts, is this your witness on the well
18 location plat itself or do you have a witness for that?
19 MR. COUNTS: With regard to the plat I'd probably refer any
20 questions to Mr. Baker.
21 MR. CHAIRMAN: Well, what we're dealing with here is an
22 application before us that has progressed to the Board
23 but is really not complete in accordance with the
24 regulations. It does say that it shall contain a
25 certified plat meaning it would be a final plat certified

1 by an engineer licensed land surveyor. We must therefore
2 in consideration of this -- and the Board can certain
3 chime in if you have any disagreement with this
4 -- say that if, in fact -- you have represented this is
5 the final plat as it turns out. If it is, in fact, the
6 final plat that we're looking at then we would ask that
7 we have a certified final plat submitted to the Gas and
8 Oil Office within ten days. (Pause.)

9 MR. COUNTS: Mr. Chairman, I'm advised that we do have an
10 updated copy of a plat which is basically the final well
11 location which reflects still the same well location.
12 Although there are some changes that has been submitted
13 with our permit application and we'll be happy to send
14 that also to the Board or to Mr. Fulmer to incorporate
15 that into this hearing.

16 MR. CHAIRMAN: Okay.

17 MR. COUNTS: Mr. Chairman, with the exception of the revised
18 plat which we will be forwarding to Mr. Fulmer we would
19 request that this application for force pooling be
20 granted by the Board.

21 MR. CHAIRMAN: Any other questions?

22 (Witness stands aside.)

23 MR. EVANS: I make a motion that we accept the petition and
24 grant the petition subject to the requirements for data
25 submittal and revisions.

1 MR. CHAIRMAN: We have a motion.
2 MR. HARRIS: Second.
3 MR. McGLOTHLIN: Second.
4 MR. CHAIRMAN: A motion and a second. All in favor signify by
5 saying yes. (ALL AFFIRM.) Opposed say no. (NONE.) The
6 application is approved as amended.
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1 ITEM VII

2
3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the force pooling of V-2533. Docket number is VGOB-
5 92/12/15-0301. It's number seven in the Board's note-
6 book. We would ask all parties that wish to address the
7 Board in this matter to come forward at this time.

8 MR. COUNTS: Mr. Chairman, Richard Counts on behalf of
9 Equitable as well as all the additional parties I've
10 previously indicated before the Board today.

11 MR. CHAIRMAN: The record will show there are no other parties
12 here requesting to address the Board.

13 MR. COUNTS: I'd like to call again Mr. Baker and remind Mr.
14 Baker's he previously been sworn.
15

16 DENNIS BAKER

17 a witness who, after having been previously sworn, was
18 examined and testified as follows:
19

20 DIRECT EXAMINATION

21
22 BY MR. COUNTS:

23 Q. Mr. Baker, you've stated you are employed by Equitable
24 Resources. Do your responsibilities include the lands
25 involved in the surrounding area of well V-2533?

1 A. Yes, they do.

2 Q. And does Equitable own drilling rights in the units
3 involved herein?

4 A. Yes, sir.

5 Q. Does the proposed unit depicted at Exhibit A include all
6 acreage within a 1,320 foot radius of proposed well V-
7 2433?

8 A. Yes, it does.

9 Q. Would you state for the Board Equitable's interest in
10 this unit?

11 A. 98.69 percent.

12 Q. Would you also state for the Board any unleased interest
13 within this unit?

14 A. 1.31 percent.

15 Q. And are all these unleased respondents set out in Exhibit
16 B?

17 A. Yes, they are.

18 Q. Prior to filing the application were efforts made to
19 contact each of these respondents in an attempt to work
20 out an agreement regarding the development of this unit?

21 A. Yes, it was.

22 Q. Subsequent to filing the application have you continued
23 to attempt to reach an agreement with these respondents,
24 locate additional parties, and have you revised your
25 Exhibit B accordingly?

1 A. Yes, we have.

2 Q. Would you indicate for the Board those revisions?

3 Dennis, give me just one second to get these passed out,

4 please.

5 A. (Pause.) On Page 3 of the revised exhibit the third name

6 from the top, Richard Mahaffey is now leased to EREX.

7 Donald Mahaffey is now leased to EREX. The fourth name

8 down from that is Mr. Joe H. Roberts who is now leased to

9 EREX. Page 4 of the revised Exhibit B, George H. Roberts

10 is now leased to EREX. Third from the bottom, Lillian

11 Stallard is now leased to EREX. That's all the revisions

12 that are to be dismissed.

13 Q. And your revised Exhibit B incorporates all these

14 revisions?

15 A. Yes, it does.

16 MR. COUNTS: Mr. Chairman, any questions with respect to these

17 revisions?

18 MR. CHAIRMAN: Questions, members of the Board?

19 MR. MCGLOTHLIN: I just noticed -- it was on the previous one

20 also. You have Wade H. Roberts estate and you have Wade

21 H. Roberts as a leased individual who's also in charge

22 of, I assume, his brothers Carl Roberts and Robert

23 Roberts. Is that the son?

24 THE WITNESS: Wade Roberts is one in the same as Wade Roberts,

25 committee for the two incompetent.

1 MR. MCGLOTHLIN: I understand that. But you have the Wade
2 Roberts estate on Page 2 of 4 under tract ten. Wade H.
3 Roberts estate.
4 THE WITNESS: Wade H. Roberts estate is senior, Wade H.
5 Roberts is the junior.
6 MR. MCGLOTHLIN: Should it not be so designated on the --
7 MR. COUNTS: Yes, sir.
8 MR. MCGLOTHLIN: It might look as if you had Mr. Roberts
9 untimely demised.
10 MR. COUNTS: Any other questions, Mr. Chairman, with regard to
11 revised Exhibit B?
12 MR. CHAIRMAN: Any further questions, members of the Board?
13 You may proceed.
14 MR. COUNTS: At this time, Mr. Chairman, if there are no
15 objections in order to facilitate things I would like to
16 request that the questions with regard to due diligence,
17 the parties sought to be pooled, and the manner of
18 elections be incorporated by reference with respect to
19 our last hearing.
20 MR. CHAIRMAN: Any objection to that, members of the Board?
21 Okay. They're incorporated.
22 Q. (Mr. Counts continues.) Mr. Baker, who do you request be
23 named operator under the forced pooling orders?
24 A. Equitable Resources Exploration.
25 MR. COUNTS: Mr. Chairman, I have no further questions of this

1 witness.

2 MR. CHAIRMAN: Okay. Let's just tie the docket numbers in on
3 the ones that you're incorporating by reference, please.

4 MR. COUNTS: With respect to the testimony given on docket
5 number VGOB-92/12/15-0296. If there are no questions of
6 Mr. Baker I'd like to call again Mr. Bob Dahlin.

7 (Witness stands aside.)

8 MR. CHAIRMAN: Mr. Dahlin, you are reminded that you're still
9 under oath.

10

11 BOB DAHLIN

12 a witness who, after having been previously sworn, was
13 examined and testified as follows:

14

15 DIRECT EXAMINATION

16

17 BY MR. COUNTS:

18 Q. Mr. Dahlin, do your responsibilities with Equitable
19 include the lands involved herein and the surrounding
20 area?

21 A. Yes, they do.

22 Q. Would you state for the Board the total depth of the
23 proposed initial well under Equitable's plan of develop-
24 ment?

25 A. 5,000 feet.

1 Q. And what formation would these include?
2 A. It would include again the Devonian Shells, Burea, Raven
3 Cliff, Weir, Max and Big Line.
4 Q. Notwithstanding these formations which you've just
5 testified are you requesting that the Board force pool
6 all formations in the well bore from the surface of the
7 ground to the total depth drilled except any coalbed
8 methane formations?
9 A. We would.
10 Q. What are the estimated reserves of the unit, Mr. Dahlin?
11 A. We have assigned 500 million cubic feet of gas to this
12 drilling unit.
13 Q. Are you familiar with the well costs for this initial
14 unit well?
15 A. I am.
16 Q. And has an AFE been prepared and reviewed and revised
17 within the last 45 days and submitted to the Board?
18 A. Yes, it has.
19 Q. Was this AFE prepared by an engineer knowledgeable in the
20 preparation of AFEs and knowledgeable in regard to well
21 costs in this area?
22 A. Yes, sir.
23 Q. In your opinion does this AFE represent a reasonable
24 estimate of the reasonable well costs for the proposed
25 initial unit well under Equitable's plan of development?

1 A. It does.

2 Q. Would you state for the Board the estimated dry hole
3 costs of this well?

4 A. Dry hold costs are \$149,250.

5 Q. And completed well cost?

6 A. Completed well cost is \$297,750.

7 Q. Mr. Dahlin, in your professional opinion will the
8 granting of this forced pooling application be in the
9 best interest of conservation, prevention of waste, and
10 protection of correlative rights?

11 A. Yes, it would.

12 MR. COUNTS: Mr. Chairman, I have no further questions of this
13 witness or any further witnesses in this matter.

14 MR. CHAIRMAN: Questions, members of the Board?

15 MR. MCGLOTHLIN: Mr. Dahlin, would you tell me the reasoning
16 on why this approximately \$10,000 more to drill this well
17 than it was to drill the previous well -- the 200 feet
18 difference in depth?

19 THE WITNESS: No. I don't have that specific information. I
20 do know that location costs are factored into the AFEs as
21 they're coming into our engineering department. And that
22 affects things such as the pipe and what not. I do not
23 have personal knowledge about the difference of the
24 price. I do know that it is calculated in the same
25 manner, the same total figures.

1 MR. COUNTS: Mr. Dahlin, would you also assume, for instance,
2 that differences may exist between these two wells in
3 terms of the amount of surface casing necessary to be
4 installed, etcetera, and that any number of items might
5 account for that discrepancy?

6 THE WITNESS: Yes. That's true.

7 MR. CHAIRMAN: Do you have an updated AFE?

8 THE WITNESS: The AFE I'm looking at is generated on January
9 8th. I assume that --

10 MR. EVANS: No. November 10th is what we're looking at now.

11 MR. CHAIRMAN: November 10th is what we have. Have you
12 submitted the one you have to the Gas and Oil Office?

13 MR. COUNTS: We would submit copies of it today if that would
14 be the Board's pleasure.

15 MR. CHAIRMAN: We have to have it. It's required.

16 MR. COUNTS: If I can submit that at this time, we'll make
17 copies before the Board leaves.

18 MR. EVANS: Is it signed?

19 THE WITNESS: No, that's not signed.

20 MR. COUNTS: I'm sorry. It's not signed, but we'll include
21 that in the record as well.

22 MR. MCGLOTHLIN: I request from EREX to have their -- whoever
23 prepared the DWES on hand at future hearings.

24 THE WITNESS: We have quite a large engineering staff. We
25 have various areas assigned at different temporary times

1 to different professional engineers. It wouldn't be
2 convenient or probably possible at times because they are
3 scheduled to have them here at this hearing. One of my
4 main responsibilities is to coordinate the engineering,
5 geology and land efforts in order to accommodate our
6 drilling program. And they are required to give to me all
7 their generated AFEs.

8 MR. COUNTS: In other words, all the AFEs that are processed
9 go through you for your approval?

10 THE WITNESS: That's right.

11 MR. COUNTS: Mr. Chairman, I think that Mr. Dahlin would be
12 sufficiently familiar with those AFEs that he should be
13 able to testimony with respect to those since they're
14 created under his direction.

15 MR. McGLOTHLIN: Mr. Dahlin, even though it's a trivial
16 figure, has been unable to answer my question on the
17 difference without specifically -- if they're going to
18 put these DWEs out here and ask us to approve them then I
19 want somebody that can give me a specific answer. It
20 should not be for us to accommodate their engineers'
21 schedule but for their engineers to accommodate our
22 schedule.

23 MR. CHAIRMAN: I think certainly there's no question that the
24 Board has to be able to query anything in the applica-
25 tion. And you need to be prepared to respond to that.

1 THE WITNESS: I would represent that anything in the AFE is
2 accurate. The information coming in to the engineering
3 staff is included at time of generation. They are
4 variable and not consistent.

5 MR. COUNTS: I'd also stipulate, Mr. McGlothlin, for well
6 being drilled to a total depth of 5,000 feet that a
7 \$10,00 variance between AFEs is a very minimal variance.
8 But if there are specific questions the Board has we'll
9 be happy to respond to those at this time.

10 MR. MCGLOTHLIN: Mr. Counts, I asked a specific question and
11 was not given an answer.

12 MR. COUNTS: I'm sorry. I was referring to a specific item in
13 terms of the AFE.

14 MR. MCGLOTHLIN: Well, I asked why the difference in cost?

15 THE WITNESS: I can look at the first and indicate that one
16 well has a directional survey included in it at a cost of
17 \$1,500. One does not. We have a difference in our
18 surface casing and cementing again based on the actual
19 location. The cumulative number is a difference in each
20 of those differences. There is no one individual at our
21 company that has any control over each of those numbers.
22 But I would represent that these are accurate, approved
23 by our management, and reflect actual drilling conditions
24 expected at these sites. These are not actual drilling
25 costs. These are anticipated AFE costs.

1 MR. EVANS: I have a question. These are obviously -- account
2 numbers are computer generated?

3 THE WITNESS: Yes, they are.

4 MR. EVANS: Do you match your actual drilling costs against
5 these same account numbers?

6 THE WITNESS: Typically we only do in a case of an overrun or
7 a difference of approximately 20 percent. We have an
8 accounting department that actually keeps track of our
9 actual drilling costs. The joint venture partners are
10 billed on actual drilling costs. We don't have an
11 internal mechanism to check discrepancies -- minor
12 discrepancies in actual drilling cost versus AFE costs.
13 We don't as a matter of practice do that.

14 MR. COUNTS: I think though what Mr. Evans is asking is if all
15 your working interest partners are being billed based
16 upon actual costs?

17 THE WITNESS: Yes, they are.

18 MR. EVANS: The other question was just exactly what I asked.
19 These numbers are obviously computer generated. You have
20 an account codes, blah, blah, blah, right down the line.
21 And I was asking you if your actual drilling costs are
22 accounted for by these same codes?

23 THE WITNESS: I don't know. That's an accounting function.
24 I'm not sure.

25 MR. EVANS: Whose function is account 1620? Who sets up that

1 account, do you as the engineering department or does
2 your accounting department?

3 THE WITNESS: I don't know.

4 MR. EVANS: Okay. I guess that's what I'm asking. You have
5 an account here and you have these numbers listed out.

6 MR. COUNTS: I would anticipate, Mr. Evans, that would set up
7 by the accounting department -- the engineering depart-
8 ment are responsible for preparing the AFE. That's
9 then, I assume, sent to the accounting department where
10 they set up the individual account numbers and all
11 billing are generated through your accounting department
12 as well.

13 THE WITNESS: That's correct.

14 MR. EVANS: Is your total cost actual cost that you would bill
15 out to JV partners or whoever else --

16 THE WITNESS: Those are captured by our accounting department
17 and not seen again in the engineering department.

18 MR. EVANS: Do they track this break-out at all or are they
19 lumped or -- I guess what I'm asking is are two different
20 systems used, one for preparing an AFE and one for
21 actually accounting for your drilling costs?

22 THE WITNESS: Definitely they are. There are different
23 departments involved and responsible for those two
24 different functions. Yes.

25 MR. EVANS: So the only thing we would be able to compare

1 regarding an AFE and total cost of completion would be
2 the final number?

3 THE WITNESS: We wouldn't even have the final number until
4 quite some time after the completion of the well.

5 MR. EVANS: That's all I'm asking. The only number that comes
6 off of this sheet that would mean anything in that
7 instance is your total completed well cost estimate and
8 then you would have a total completed well cost actual
9 dollars --

10 THE WITNESS: Quite some time after the fact.

11 MR. EVANS: But as far as any kind of a break-out the two
12 wouldn't match?

13 THE WITNESS: That's right. All these figures are based on
14 varied fluid in changing -- for instance, service company
15 bid prices. We see that changing continuously. Drilling
16 rate changes. Logging cost changes. Pipe changes.

17 MR. EVANS: I know the costs will change, but the account item
18 -- contract footage, whether it be 5,000 at \$14.75 or
19 \$13.22 or \$20.50 --

20 THE WITNESS: I'm not sure of how the code ties into the
21 drilling cost. That particular 1620.1 is just an
22 accounting feature. It's computer generated like you
23 illustrated. Largely what will change on our estimated
24 drilling costs are the estimated drilling depths and
25 we'll use different companies based on their capacity to

1 reach a certain depth and their appropriate ability to
2 fit on a particular location. Rig size, location size,
3 what not. The drilling costs in this case are for union
4 drilling rigs drilling to this depth in our Roaring Fork
5 field.

6 MR. KELLY: Let me ask it this way. Are actual costs categor-
7 ized the same as AFE costs?

8 THE WITNESS: I don't know.

9 MR. KELLY: I think maybe that's what Mr. Evans was trying to
10 get to. Do you have the same category for actual costs
11 that is shown in the AFE for estimated costs and can you
12 track those categories from the AFE to the actual and if
13 not, how are we or how is anyone going to be able to
14 determine if those are reasonable costs? They're not
15 categorized the same way? Is that what you're getting
16 at?

17 MR. EVANS: What I'm asking is how do you go from one to the
18 other?

19 MR. COUNTS: Mr. Chairman and members of the Board, Mr. Dahlin
20 can't testify with respect to whether or not the account-
21 ing department uses the same codes or not. But the cost
22 are broken out when invoiced to the joint interest
23 partners. And they're essentially going to be broken out
24 in the same types of categories that we see here with
25 regard to the AFE. And the Board certainly enjoys

1 continuing jurisdiction over the reasonableness of those
2 well costs.

3 MR. EVANS: That's all I'm trying to get to. We've got an
4 estimate here and at some point in time to determine
5 whether those estimates are reasonable or whatever else
6 we're going to have to see some actual costs to make -- I
7 want to be able to compare apples to apples.

8 MR. COUNTS: And these are going to be broken out again
9 effectively in the same way. What we just simply can't
10 say today is that the same number is used in the account-
11 ing department as used in engineering. However, we will
12 have that answer for you at our next forced pooling and
13 be able to tell the Board whether or not we use those
14 exact same numbers and the same exact headings in terms
15 of invoicing all of our joint interest parties.

16 MR. EVANS: That's fine.

17 MR. KELLY: Let me just bring one other thing out. Would you
18 agree that each category of cost is not necessarily or
19 specifically depth related? That a shallower well might
20 in many cases have a higher cost for casing or cementing
21 than a deeper well, depending on the situation.

22 THE WITNESS: Very likely could be, yes.

23 MR. KELLY: The same thing with location costs, depending on
24 the length of the road or the type of construction
25 necessary. I mean, the different categories in the AFE

1 may vary from one well to the next for reasons other than
2 depth and that to track a well cost based on looking at a
3 comparison of depths is not necessarily going to give
4 you an accurate comparison?

5 THE WITNESS: All those statements are very true. There's a
6 wide range of things that influence the costs. For
7 instance, we could have a well off setting another well
8 that may penetrate an open mine and would require an
9 additional coal stream, additional cementing services,
10 possibly some other agreement with a coal company
11 requiring a deviational survey. Many different specific
12 things with many different specific companies come into
13 play on each individual well. Our accounting department
14 does capture actual drilling costs although I can't tell
15 you today whether that's 1620.1.

16 MR. EVANS: Would it be entitled -- forget the account code
17 numbers as they appear on here. Would your accounting
18 department capture a figure for drilling water, drilling
19 hammer, I mean, where's the stabilizers, bits?

20 THE WITNESS: Yes, sir, we do.

21 MR. EVANS: By description?

22 THE WITNESS: Yes. By whatever third party or second party
23 company, whatever.

24 MR. EVANS: That's fine. As long as there is some way to take
25 the information on this sheet and say, you estimated that

1 your coring was going to cost you nothing but it cost
2 you something or -- it's the reasonableness and the
3 ability to be able to revise these estimates to get
4 better estimates.

5 THE WITNESS: Right.

6 MR. EVANS: That's all my question was, that it will be broken
7 out maybe not by that account number by at least by a
8 description?

9 THE WITNESS: Yes. That's true.

10 MR. CHAIRMAN: That's a real important issue because the Board
11 has the responsibility to insure the reasonableness as
12 people have the opportunity to make elections. I they're
13 participating or anything else, it has a direct impact on
14 whether or not -- if it were an unreasonable fee then it
15 could drive people away from participation or anything
16 else.

17 MR. COUNTS: I'd like to stipulate too, Mr. Chairman and
18 members of the Board, that obviously this is a well which
19 Equitable has joint interest partners involved in. Those
20 parties are subject to a joint operating agreement and I
21 can assure you that those costs are going to be submitted
22 to -- those parties are industry partners and they will
23 be scrutinized and they will have to be categorized. We
24 don't know yet whether or not the accounting codes match,
25 but we'll find that out and -- it may even make sense for

1 them to match. But as long as the Board is aware of the
2 fact that they are individually itemized, certainly
3 that's the only way that you can make sure that you
4 compare costs in the future should there ever be a
5 question on that issue.

6 THE WITNESS: The issuance of the account code and the number
7 that is used -- my question really dealt with was those
8 account codes obviously have a description because this
9 is all computer generated. The accounting department,
10 whatever code they might use, do they have a description
11 that matches something whether it be that account number
12 or 4267.7, blah, blah, blah?

13 THE WITNESS: Yeah, they do.

14 MR. EVANS: And you've answered it. You've said that they do
15 keep up a listing of what it is they're billing out
16 regardless of -- I don't care what account number or
17 account code as long as there's a description of service
18 or the goods.

19 THE WITNESS: That's accounted for and available. I don't
20 know what we're bound by --

21 MR. EVANS: Well, it's a question we have to be -- you're
22 going to make an estimated cost and say, "Joe, do you
23 want to participate in this well based on this estimate
24 cost?" Well, how good's that estimate? That's what
25 we're talking about.

1 THE WITNESS: I could elaborate to the degree that we are
2 successors entitled to the properties owned by A&R. We
3 are learning how their estimates compare to our estimates
4 as we develop the field. We have accurate numbers and we
5 are revising our AFEs at least at the end of the year to
6 reflect what we have learned. We would be very coopera-
7 tive in sharing our actual costs on a particular well.
8 How to get that to you for your consideration I'm open
9 for suggestions from our counsel about how to tie the
10 two. We can do that -- I'm not quite sure how to tie the
11 actual cost into the AFE costs.

12 MR. EVANS: I guess in order to answer your question, I would
13 not expect you to necessarily provide me actual costs on
14 well whatever. But if you got one that's 5,000 deep and
15 it's similar you're drilling costs are going to be --
16 whatever changes. And I'm sure that you might pay a
17 quarter more for the pipe or a quarter less or a nickel
18 less. You might get a deal on pipe for a three month
19 period and suddenly the price goes up. I understand all
20 that. It's just a question of when we look at something
21 is that a reasonable number. And it's a reasonable
22 number at that time and it does fluctuate. But if you
23 get a large differential in what you estimate it's going
24 to cost you and you have a large over run there's really
25 not too much reason -- if you have \$20,000 on here for an

1 item and it does actually cost you \$40,000. I can see an
2 estimate being an estimate, but being 100 percent off is
3 something else again, too.

4 THE WITNESS: I can tel you that our accounting department
5 does have a flag at any 20 percent over run. It immedia-
6 tely comes back into our department.

7 MR. EVANS: All right. And, of course, they're always looking
8 for the savings.

9 THE WITNESS: Absolutely.

10 MR. CHAIRMAN: I have one other question. Have you filed an
11 affidavit of due diligence with the Gas and Oil Inspect-
12 or's Office?

13 MR. COUNTS: Mr. Chairman, our application dated November
14 16th, 1992 under the allegation of facts, paragraph 2,
15 states that the applicant has exercised due diligence to
16 locate each of the oil and gas interest owners named
17 therein in Exhibit B and have made a bona fide effort to
18 reach an agreement, etcetera, etcetera, provided notice,
19 etcetera. So the answer to that would be yes.

20 MR. CHAIRMAN: Other questions, members of the Board?

21 (Witness stands aside.)

22 MR. COUNTS: Mr. Chairman, I'll try also to clear up the part
23 about the 45 days. We attempt to make sure that we have
24 a fairly right AFE that accurately reflects cost. But in
25 talking to Ms. Riggs a few minutes ago I'm not sure that

1 the regs themselves state that there is a specified time
2 within which the AFE has to be current. And what we
3 would like to stipulate here unless the Board has a
4 concern with that is that this AFE has not been revised
5 or prepared within the past 45 days but does reflect the
6 accurate cost and has been prepared within the recent
7 past and would be accurate. I would request that that be
8 sufficient for purposes of this hearing.

9 MR. CHAIRMAN: I think that meets the intent of the Board's
10 regulations.

11 MR. COUNTS: I would suggest, Mr. Chairman, at some point in
12 time that consideration be given to that because I think
13 that applicants probably should put on -- provide an AFE
14 that has been prepared within a given period of time.
15 Whether it's been 45 days or 60 days or 90 days, that
16 that statement be made to indicate that those numbers are
17 accurate and indicate a reasonable cost for those
18 anticipated drilling costs. Our over diligence there got
19 me in trouble. So I apologize for that.

20 MR. CHAIRMAN: We keep taking these AFEs and we keep pressing
21 because it is a serious matter. But one thing I guess
22 we're also not having full compliance in is direct cost
23 and indirect cost specified as such. And the Board's
24 regs specifically lay out allowable costs under direct
25 and allowable costs under indirect as categories. I

1 think we're going to have to see more tieing directing to
2 the specific requirements of Section 10 in that as well
3 for costs. Anything further, Board?

4 MR. KELLY: I would move that the petition be approved.

5 MR. CHAIRMAN: A motion to approve.

6 MR. MCGLOTHLIN: Mr. Kelly, with the provision that they
7 bring a signed DWE?

8 MR. KELLY: With the amendment to provisions as previously
9 required.

10 MR. EVANS: Second.

11 MR. CHAIRMAN: A motion and a second. Any further discussion?

12 All in favor signify by saying yes. (ALL AFFIRM.)

13 Opposed say no. (NONE.) It's a unanimous approval.

14 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)
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ITEM VIII, XXVI

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3 MR. CHAIRMAN: The next item on the agenda is the Board's Item
4 VIII. Docket number VGOB-92/12/15-0302. This is a
5 petition for a well location exception by Equitable
6 Resources Exploration for V-2672. I would ask the
7 parties that wish to address the Board in this matter to
8 come forward at this time. Go ahead, Mr. Counts. The
9 record will show that there are other parties.

10 MR. COUNTS: Basically, Mr. Chairman, we're going to ask with
11 regard to Item VIII on the docket regarding V-2672 which
12 is VGOB-92/12/15-0302 be combined with Item XXVI which is
13 V-2671, VGOB-93/01/17-0320. Mr. Chairman, the interest
14 involved here are essentially the same parties -- are the
15 same parties in addition to which these wells are
16 effectively offsets to each other. They're all in the
17 same exhibit. I feel like that this hearing will be more
18 facilitated as a result of hearing these all together.

19 MR. CHAIRMAN: Okay. We'll do that.

20 MR. COUNTS: Thank you, sir. Mr. Chairman, these are again
21 requests for location exceptions. These location
22 exceptions are dictated primarily as a result of mining
23 considerations. Topography also bears an interest. And
24 certainly from a oil and gas conservation standpoint it's
25 our position that these wells would result in a signifi-

1 cant amount of waste in the event these location excep-
2 tions were not approved. In term of expert witnesses
3 I'll be calling Mr. Dennis Baker from a land standpoint,
4 Mr. Bob Dahlin from geology, and Mr. Keith Horton as coal
5 owner and also as the royalty owner and a working
6 interest partner. From a land standpoint Mr. Lee Talbot
7 will be testifying. I'd like to call now, if I may, Mr.
8 Lee Talbot.

9
10 LEE TALBOT

11 a witness who, after having been duly sworn, was examined and
12 testified as follows:

13
14 DIRECT EXAMINATION

15
16 BY MR. COUNTS:

17 Q. Would you state your complete name for the record and who
18 you're employed by and in what capacity?

19 A. Lee Talbot, land administrator for Equitable Resources
20 Exploration.

21 Q. And are you familiar with these lands and the applica-
22 tions for relief requested?

23 A. Yes, sir.

24 Q. Have your qualifications as an expert witness previously
25 been accepted by this Board?

1 A. They have.

2 MR. COUNTS: Mr. Chairman, I move that Mr. Talbot's testimony
3 be admitted as that of an expert witness in this matter.

4 MR. CHAIRMAN: Any objections? Okay.

5 Q. (Mr. Counts continues.) Mr. Talbot, are you familiar
6 with the application for location exception of well 2672
7 and 2671 and the relief requested?

8 A. Yes, sir.

9 Q. With respect to 2672, Mr. Talbot, has this well been
10 permitted?

11 A. It has.

12 MR. COUNTS: Mr. Wampler, I'd state that we talked to Mr.
13 Fulmer's office. This well is obviously a location
14 exception. A permit on this well -- number 2287 -- was
15 issued on December 11th, 1992. We nonetheless have this
16 matter before the Board because a location exception is
17 necessary in order to obtain a permit to drill on this.
18 We've talked to Mr. Fulmer about that and Mr. Fulmer
19 wanted to make sure that we brought that to the attention
20 of the Board before we commenced this hearing.

21 MR. CHAIRMAN: Okay.

22 Q. (Mr. Counts continues.) Mr. Talbot, have all the
23 interested parties been notified of this hearing as
24 required by the Virginia Oil and Gas Board regulations?

25 A. Yes, they have. Virginia Department of Mines and

1 Minerals Division of Oil and Gas has received copies of
2 certified mailings. They're dated November 18, 1992.

3 Q. Would you indicate for the Board the ownership of the oil
4 and gas underlying well 2672 as well as 2671?

5 A. 2672 represents 100 percent of Equitable Resources'
6 operating rights. The oil and gas is 95.12 percent by
7 Westmoreland Coal Company and 4.88 percent of Penn-
8 Virginia Resources Corporation which have leased to
9 Equitable Resources.

10 Q. Does Equitable have a working interest in the oil and gas
11 leases covering these tracts and what percentage of these
12 tracts are leased to Equitable?

13 A. 100 percent of the tracts are leased to Equitable. We
14 have a working interest and 100 percent operating
15 rights.

16 Q. And that would apply both with respect to the units
17 surrounding 2671 as well as 2672?

18 A. Yes, sir. However, on 2671 the interest has somewhat
19 changed. As to the ownerships they're the same. Penn-
20 Virginia Resources Corporation in 2671 owns 80.15 percent
21 whereas Westmoreland Coal Company owns 19.85 percent in
22 2671.

23 Q. The parties are the same with respect to both locations
24 2671 and 2672?

25 A. Yes, sir.

1 Q. Mr. Talbot, I believe you've already stated this but just
2 to make certain from the Board's standpoint, do these
3 leases cover all the oil and gas owners within a 1,320
4 foot radius of wells 26712 and 2672?

5 A. Yes, sir, they do.

6 Q. And does Equitable also have the right to operate the
7 receptacle wells surrounding each of these locations?

8 A. Yes, sir.

9 Q. Would that operating interest be 100 percent?

10 A. It's 100 percent operating interest.

11 MR. COUNTS: Mr. Chairman, I have no further questions of this
12 witness.

13 MR. EVANS: In all the receptacle wells surrounding these two
14 wells are there any other landowners or is it all the
15 same people --

16 THE WITNESS: Yes, sir. Everything is under lease to Equit-
17 able Resources.

18 MR. CHAIRMAN: Other questions?

19 (Witness stands aside.)

20 MR. CHAIRMAN: Call your next witness.

21 MR. COUNTS: The next witness I'd like to call is Mr. Bob
22 Dahlin.

23 MR. CHAIRMAN: You've already been sworn. I'll remind you
24 that you're under oath. Go ahead.

25 MR. COUNTS: Before we get to asking this witness questions,

1 Mr. Chairman, I've already submitted exhibits with respect to
2 the Emboden mine works with regard to wells 2671 and 267.
3 I'd like to have that listed as Exhibit A and the
4 Dorchester mine works as Exhibit B.

5
6 BOB DAHLIN

7 a witness who, after having been previously sworn, was
8 examined and testified as follows:

9
10 DIRECT EXAMINATION

11
12 BY MR. COUNTS:

13 Q. Mr. Dahlin, you've indicated you're employed by Equitable
14 Resources. Are you familiar with the locations on 2671
15 and 2672?

16 A. Yes, I am.

17 Q. Do your responsibilities include the lands involved
18 herein and the surrounding area?

19 A. Yes, sir, they do.

20 Q. And are you familiar with the applications for location
21 exceptions for 2672 and 2671?

22 A. I am.

23 Q. Would you summarize briefly for the Board from Equit-
24 able's prospective the purpose of this application?

25 A. The application is to obtain to a variance on spacing to

- 1 allow us to complete our drilling efforts in this area
2 and in cooperation with the coal company the derived
3 location is what the Board has in front of them.
- 4 Q. Is it fair to say, Mr. Dahlin, that a major consideration
5 with respect to these two requests for location excep-
6 tions would be to prevent waste?
- 7 A. Yes, sir.
- 8 Q. And are these primarily developmental locations wherein a
9 number of wells surrounding these wells were spaced
10 previously under different spacing regulations?
- 11 A. Yes, sir. We're surrounded on the west, north and
12 southeast by existing wells.
- 13 Q. With respect to locations 2671 and 2672 would you
14 estimate or can you project the estimated waste from the
15 loss of reserves standpoint with respect to both of those
16 units?
- 17 A. Yes, sir. Through our engineering department we've
18 assigned 500 million cubic foot of gas to drilling unit
19 2672 and approximately 450 million cubic foot to drilling
20 unit 2671.
- 21 Q. And should all non-coalbed methane formations from the
22 surface of the ground to the total depth drilled be
23 covered by any order issued by this Board?
- 24 A. Yes, sir.
- 25 Q. Mr. Dahlin, in your professional opinion in considering

1 the surrounding wells depicted on the plats with respect
2 to 2671 and 2672 are there any other locations which
3 would allow these wells to be drilled without requiring
4 well location exceptions?
5 A. Again not that are located in cooperation with a coal
6 company.
7 Q. Mr. Dahlin, in your opinion will granting of these
8 locations exceptions be in the best interest of prevent-
9 ing waste, protecting correlative rights and maximizing
10 recovery of the gas and coal reserves underlying V-2671
11 and V-2672?
12 A. Yes, sir.
13 MR. COUNTS: Mr. Chairman, I have no further questions of this
14 witness.
15 MR. CHAIRMAN: Could you revisit the formations that you plan
16 to produce, please?
17 THE WITNESS: We expect to complete in the Devonian Shells,
18 the Berea, Raven Cliff, Wier, Max and Big Line forma-
19 tions.
20 MR. CHAIRMAN: For both these wells?
21 THE WITNESS: Yes, sir.
22 MR. CHAIRMAN: Any other questions, members of the Board?
23 (Witness stands aside.)
24 MR. CHAIRMAN: Call your next witness, please.
25 MR. COUNTS: Mr. Chairman, I'd now like to call Mr. Keith

1 Horton.

2
3 KEITH HORTON

4 a witness who, after having been duly sworn, was examined and
5 testified as follows:

6
7 DIRECT EXAMINATION

8
9 BY MR. COUNTS:

10 Q. Mr. Horton, who are you employed by and in what capacity?

11 A. Penn-Virginia Resources Corporation as vice-president
12 coal.

13 Q. And you're a mining engineer, is that correct?

14 A. Correct.

15 Q. Mr. Horton, have you previously testified before this
16 Board and has this Board accepted your testimony as an
17 expert witness?

18 A. Yes, it has.

19 MR. COUNTS: I move that Mr. Horton's testimony as an expert
20 witness be accepted in these matters.

21 MR. CHAIRMAN: Any objection? Okay.

22 Q. (Mr. Counts continues.) Mr. Horton, are you familiar
23 with the applications for locations exceptions for wells
24 2671 and 2672?

25 A. I am.

1 Q. And are you familiar with these locations as it may
2 relate to mining operations, topography and effective
3 land management practices?
4 A. Yes, I am.
5 Q. You've heard the testimony as to the ownership of the oil
6 and gas underlying unit 2672 and 2671. Is PVRC a royalty
7 owner as well as a working interest owner in the subject
8 wells?
9 A. Yes, we are.
10 Q. In other words, PVRC has a great stake in the drilling of
11 these wells?
12 A. Absolutely, yes.
13 Q. Mr. Horton, is Penn-Virginia involved in the process of
14 selecting locations for wells which Equitable operates in
15 particular with respect to 2671 and 2672?
16 A. Yes, we are.
17 Q. Mr. Talbot has testified that with respect to 2672 that
18 Westmoreland Coal Company owns a 19.85 percent interest
19 in the oil and gas underlying this unit. Does Westmore-
20 land Coal Company also operate the Bullet Mine within
21 unit 2671 and portions of 2672?
22 A. That's correct.
23 Q. What is Westmoreland Coal Company's relationship with
24 Penn-Virginia Resources Corporation? I should say Penn-
25 Virginia Corporation.

1 A. Penn-Virginia owns approximately 20 percent of Westmore-
2 land Coal as well as Westmoreland Coal is a lessee for
3 most of the coal development on this property owned by
4 Penn-Virginia Resources.

5 Q. Mr. Horton, has Penn-Virginia secured Westmoreland Coal
6 Company's approval with respect to these locations for
7 2671 and 2672?

8 A. Yes, we have.

9 Q. And is this part of your standard process with respect
10 to locating wells within the coal reserves?

11 A. Yes, it is.

12 Q. Is it also standard procedure for Penn-Virginia and
13 Westmoreland Coal Company to cooperate in selecting well
14 locations which are most consistent with present, past
15 and future mining operations?

16 A. Yes. That's our normal method of operation.

17 Q. Would you indicate for the Board some of the considera-
18 tions taken into consideration by Penn-Virginia in terms
19 of attempting to locate these wells?

20 A. 2672 is situated in a barrier block or a solid block of
21 coal left along the main line in the Bullet Mine of
22 Westmoreland Coal Dorchester Seam. Immediately to
23 the --

24 Q. Excuse me, Mr. Horton. Would you indicate for the Board
25 which exhibit you're referring to?

1 A. Exhibit B.

2 Q. This is the Dorchester mine works?

3 A. That's correct. The Dorchester mine, the Bullet mine is

4 active at this stage of the game. Immediately to the

5 northwest of the proposed location of 2672 is an abandon-

6 ed longwall panel that has been mined out and abandoned.

7 To the northeast and to the southeast are active mains or

8 ventilation entries for the Bullet Mine. To avoid

9 penetration of those entries and avoid surface minable

10 reserves in the Wilson seam above this was the only

11 location we could find to accommodate both the coal

12 company's wishes and the oil and gas company's wishes.

13 Q. While we're looking at Exhibit B on the Dorchester mine

14 works would you also indicate the concerns -- consider-

15 ations with respect to locating the V-2671 well?

16 A. 2671 on Exhibit B is located some 2,180 feet approximate-

17 ly from 2672. You'll note we have struck a radius from

18 2672 at a distance of 2,640 feet on the exhibit and the

19 area shaded in bright red is the only location that would

20 not require a spacing exception. In doing so we evaluat-

21 ed -- you'll also note a heavy line which penetrates

22 right through that red zone which is a proposed strip

23 operation of Westmoreland Coal in the Wilson seam which

24 is some 750 feet above the Dorchester mine works. The

25 yellow is highlighting gate road entries for the long-

1 wall. These are remaining chain pillars that are left
2 underground and all the remaining coal has been long-
3 walled and removed. And we believe that they would
4 heavily concentrated with stress and therefore may be a
5 hazard to drilling well through. So we tried to avoid
6 them to prevent maybe fluid movement or stress strain
7 into the well bore. So we were quite limited in where we
8 could potentially locate this particular well.

9 Q. Mr. Horton, I know that the coal reserves are a major
10 concern, but is it safe to say with respect to 2671 and
11 2672 that the primary consideration with respect to these
12 locations is a safety consideration for miners?

13 A. Absolutely. Yes, it is.

14 Q. Would you also refer to Exhibit A on the Emboden works
15 and indicate for the Board the considerations there?

16 A. Exhibit A basically shows the Emboden Seam which has been
17 mined out and abandoned some 450 feet above. In some
18 areas there are localized pockets of water which we have
19 tried to avoid by reviewing detail mine maps. Also this
20 requires that we locate 2672, for example, in a solid
21 block of coal for a safety consideration for underground
22 miners. That's the basic reason for showing the Emboden
23 Seam works overlying.

24 Q. Does PVRC support Equitable's application for these
25 location exceptions on 2671 and 2672?

1 A. Yes, we do.

2 Q. Is it your professional opinion that these requested
3 location exceptions represent the best possible locations
4 which would allow this well to be drilled consistent with
5 effective land management practices?

6 A. Yes, it is.

7 Q. Is it your professional opinion that the granting of
8 these location exceptions by the Board will prevent waste
9 and protect correlative rights, protect your coal
10 reserves, result in increase safety for mining and
11 promote effective land management practices?

12 A. Yes, it is.

13 MR. COUNTS: No further questions, Mr. Chairman.

14 MR. CHAIRMAN: Questions, members of the Board?

15 MR. EVANS: Mr. Horton, on 2671 how close are you going to
16 come to the chain pillars and the gate road and how long
17 ago was that mined? Is that down for quite a while?

18 THE WITNESS: It was mined in 1986.

19 MR. EVANS: So it's been down and most of the subsidence --
20 everything has pretty much settled down. It's not --

21 THE WITNESS: No, it's not active in the active longwalling
22 operation. It's not in this immediate area as well.

23 MR. EVANS: That's all I need to know, how long ago it fell.

24 MR. CHAIRMAN: Other questions?

25 (Witness stands aside.)

1 MR. COUNTS: Mr. Chairman, I request that these location
2 exceptions for 2671 and 2672 be approved by the Board as
3 submitted.

4 MR. MCGLOTHLIN: Mr. Counts, what is the radius that you
5 anticipate that the well will service?

6 MR. COUNTS: I'll direct that question to Mr. Dahlin.

7 MR. DAHLIN: I'm not exactly sure about the question, but I've
8 highlighted on our field map the area that will be
9 drained by the two wells and the --

10 MR. MCGLOTHLIN: Somewhere around 1,320 or something like
11 that?

12 MR. COUNTS: Would it be fair to say, Mr. Dahlin, that you
13 anticipate those wells will drill either to 1,320 feet or
14 something less than that amount?

15 MR. DAHLIN: Yes.

16 MR. MCGLOTHLIN: It was just kind of confusing with the big
17 circles on the maps. It kind of looked like almost
18 didn't need that well.

19 THE WITNESS: Some are just slightly less than a legal
20 location.

21 MR. MCGLOTHLIN: Thank you. Those are 2,640 radius.

22 MR. CHAIRMAN: Other questions?

23 (Witness stands aside.)

24 MR. MCGLOTHLIN: I move that we approve the petition as
25 submitted.

1 MR. CHAIRMAN: We have a motion to approve the two petitions
2 for well location exceptions.

3 MR. EVANS: Second.

4 MR. CHAIRMAN: We have a motion and a second. Further
5 discussion? All in favor signify by saying yes. (ALL
6 AFFIRM.) Opposed say no. (NONE.) It's a unanimous
7 approval.

8 MR. COUNTS: Mr. Chairman, if I may, I'd also like to submit
9 the proposed order to the Board with respect to both of
10 these requests for location exceptions.

11 MR. CHAIRMAN: Thank you.
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ITEM XV

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3 MR. CHAIRMAN: The next item on the agenda is a petition for
4 the force pooling by Equitable Resources Corporation for
5 PC-313. This is docket number VGOB-93/01/19-0309. This
6 is the Board's item fifteen. So everyone can kind of
7 estimate your time, depending on how things go, I'm
8 assuming that we'll do XV, XXI and stop for the day.

9 MR. COUNTS: How long would the Board anticipate going forth?

10 MR. CHAIRMAN: I have some folks that would like to leave
11 around 4:30 if they could, but we'll get those two for
12 whatever time it takes.

13 MR. COUNTS: It's up to the Board, but I think that there's a
14 reasonable good change we could be finished by 5:00. But
15 I'll leave that to the Board's discretion obviously.

16 MR. CHAIRMAN: I don't think the Board's going to finish,
17 particularly with Item XIX by 5:00 today.

18 MR. COUNTS: Oh, I assume that XIX wouldn't take a great deal
19 of time, Mr. Chairman.

20 MR. CHAIRMAN: I don't think the Chair can agree with that,
21 Mr. Counts. We'll go forward here and see how it goes.

22 MR. COUNTS: We're at Item XV, is that correct?

23 MR. CHAIRMAN: That's correct.

24 MR. COUNTS: If my last witnesses on force poolings haven't
25 deserted me I think I'm ready to proceed.

1 MR. CHAIRMAN: We'd ask that all parties wishing to address
2 the Board in docket number VGOB-93/01/19-0309 to come
3 forward at this time. The record will show there are no
4 other parties addressing the Board. Mr. Counts, you may
5 proceed.

6 MR. COUNTS: This is a request for force pooling on a coalbed
7 methane well, PC-313. I'd like to call as my first
8 witness Mr. Dennis Baker. I'll remind Mr. Baker that
9 he's previously been sworn and that his testimony as an
10 expert witness in these matters have been accepted by the
11 Board.

12
13 DENNIS BAKER

14 a witness who, after having been previously sworn, was
15 examined and testified as follows:

16
17 DIRECT EXAMINATION

18
19 BY MR. COUNTS:

20 Q. Mr. Baker, are you familiar with the drilling unit
21 surrounding PC-313?

22 A. Yes, I am.

23 Q. Does Equitable own drilling rights in the units involved
24 underlying this unit?

25 A. Yes, they do.

1 Q. Would you state for the Board the interest of Equitable
2 within this unit?
3 A. 99.589 percent.
4 Q. In other words, you've got a total unleased percentage
5 here of .411 percent, is that correct?
6 A. That is correct.
7 Q. Prior to filing the application were efforts made to
8 contact each of the respondents in an attempt to work out
9 an agreement with regard to the development of the unit
10 involved?
11 A. Yes, there were.
12 Q. Have you continued to reach agreements even subsequent to
13 filing your application?
14 A. Yes, we have.
15 Q. Do you wish to revise Exhibit B at this time?
16 A. Yes, I would.
17 Q. Would you indicate for the Board those revisions you wish
18 to make with respect to Exhibit B?
19 A. On Page 3 of the revised Exhibit B the individuals Debbie
20 and Terry Tomlinson are now leased to EREX. Also Robin
21 M. and Blane Owens are now leased to EREX. Those are the
22 only two dismissals.
23 Q. So you wish simply to revise the exhibit to indicate that
24 those two parties are now under lease and are leased
25 interest -- under lease to Equitable Resources?

1 A. Yes.

2 MR. COUNTS: Are there any questions from the Board with
3 respect to revised Exhibit B, Mr. Chairman?

4 MR. CHAIRMAN: Any other questions?

5 MR. EVANS: I've got one real quick question. On coal estate
6 only, what do you mean by opened? Was that unleased or
7 -- and also the oil and gas estate above it. Is that the
8 same on the original application? Why did you go and
9 execute a lease with Clinchfield, I guess is what I'm
10 asking? Just to cover yourself?

11 MR. COUNTS: This is an application for coalbed methane forced
12 pooling and that is with respect to making sure that the
13 competing claimants are all included within the applica-
14 tion.

15 MR. EVANS: Okay. In looking at it they have no interest
16 within the unit and no gross acreage.

17 MR. COUNTS: We have a lease from Clinchfield Coal Company
18 with respect to the interest.

19 MR. EVANS: Blanket covers more than --

20 MR. COUNTS: Yes. That is correct, at least covering the
21 coalbed methane estate.

22 MR. EVANS: Does Clinchfield have any interest within this
23 unit?

24 MR. COUNTS: Mr. Evans, with respect to Pittston's interest,
25 it's only perceived as a potential interest at this point

1 in time. Our title work has not confirmed that they do,
2 in fact, have an interest. It's just a possibility it
3 may eventually be conditionally determined to have an
4 interest in that unit.

5 MR. EVANS: But as to right now that's why you say that have
6 no gross acreage and they have no interest?

7 MR. COUNTS: That is correct.

8 MR. EVANS: And yet you do have a lease just to cover your-
9 self?

10 MR. COUNTS: Correct, protective leases.

11 MR. MCGLOTHLIN: On the map it shows them as the surface owner
12 -- coal and surface owner on their well location plat.

13 MR. COUNTS: That was just to get an explanation of why
14 they're listed and have no interest.

15 MR. CHAIRMAN: Did you adjust all the percentages -- that's
16 what I was trying to look and see -- accordingly?

17 MR. EVANS: Yes.

18 MR. CHAIRMAN: Okay.

19 MR. COUNTS: Mr. Baker is going to attempt to further address
20 your question, Mr. Evans.

21 THE WITNESS: On Exhibit B, Page 1, on tract one, two and
22 three it is shown -- the respective tracts as shown on
23 the well plat and the break down and percentage of the
24 unit. As you can see tract one, two and three the oil,
25 gas and coal estate is owned by Pine Mountain and the

respective interest of the unit. Tract four is shown as being the oil and gas estate, Elihu L. Kiser tract. And the individuals following, of course, has the interest in that. In tract four as shown on Page 3 continued is the coal estate which applies to the Elihu L. Kiser tract.

MR. EVANS: No problem. I was just trying to get clarification as to --

MR. MCGLOTHLIN: Is it safe to assume that Clinchfield has 100 percent of the coal and whatever the difference between the Elihu Kiser tract on the oil and gas lease?

MR. COUNTS: That's the competing interest.

MR. CHAIRMAN: Other questions? You may proceed.

MR. COUNTS: Mr. Chairman, with respect to due diligence issues again the parties sought to be force pooled, the manner of elections, I would refer the Board back to the testimony incorporated at VGOB-92/12/15-0296 and request that be incorporated into this hearing.

MR. CHAIRMAN: Any objections? Okay.

Q. (Mr. Counts continues.) Mr. Baker, who do you request be named operator of this unit?

A. Equitable Resources Exploration.

MR. COUNTS: Mr. Chairman, that's all the questions I have of this witness.

MR. CHAIRMAN: Other questions, members of the Board?

(Witness stands aside.)

1 MR. CHAIRMAN: Call your next witness.

2 MR. COUNTS: My next witness is Mr. Bob Dahlin. I'll remind
3 Mr. Dahlin he's previously been sworn.

4
5 BOB DAHLIN

6 a witness who, after having been previously sworn, was
7 examined and testified as follows:

8
9 DIRECT EXAMINATION

10
11 BY MR. COUNTS:

12 Q. Mr. Dahlin, what is the total depth of the proposed
13 initial well under Equitable's plan of development?

14 A. 2,460 feet.

15 Q. And what are the formations that you are seeking to force
16 pool with respect to coalbed methane underlying this
17 unit?

18 A. All Pennsylvanian age coals from the top of the Raven
19 formation and all splits to the top of the red and green
20 shells.

21 Q. That's all the splits in the Raven including all sub-
22 sequent formations encountered down to the top of the
23 green and red shells, is that correct?

24 A. That's correct.

25 Q. What are the estimated reserves of the unit, Mr. Dahlin?

1 A. Approximately 350 million cubic foot of gas.

2 Q. And have you procured a consent to stimulate the subject

3 formations from all coal owners within this unit?

4 A. Yes, we have.

5 Q. And are you familiar with the well costs for the proposed

6 initial unit well under Equitable's plan of development?

7 A. Yes, I am.

8 Q. Has an AFE recently been prepared or reviewed and revised

9 and submitted to the Board?

10 A. Yes, it has.

11 MR. CHAIRMAN: Do we have the consent to stimulate?

12 MR. EVANS: That's what I was looking for.

13 MR. COUNTS: We have previously provided a consent to stimu-

14 late from Pine Mountain Oil and Gas -- excuse me,

15 Clinchfield Coal. It's in the permit application.

16 MR. CHAIRMAN: Do you have that, Mr. Fulmer?

17 MR. FULMER: I have no way of verifying it. I don't have the

18 permit application with me. But they do submit consent

19 to stimulate with every permit.

20 MR. CHAIRMAN: If you'd just check to make sure. I'm not

21 trying to doubt you. We just have to verify that it's

22 there. Okay. Go ahead.

23 MR. COUNTS: Again on this matter too, Mr. Chairman, we will

24 be submitting an AFE. Although the AFE is submitted

25 along with our application which, of course, we're

1 basically attesting the fact that it's truthful. We're
2 going to nonetheless at the Board's request submit a
3 revised application which will be signed by an engineer
4 from Equitable Resources.

5 Q. (Mr. Counts continues.) Mr. Dahlin, what are the
6 estimated reserves underlying this unit?

7 A. Approximately 350 million cubic foot of gas.

8 Q. With respect to the AFE would you indicate what the dry
9 hole costs are as well as completed well cost?

10 A. Dry hole cost of \$93,692. Completed well cost is
11 \$201,500.

12 Q. Mr. Dahlin, in your professional opinion will the
13 granting of this application be in the best interest of
14 conservation, prevention of waste, and protection of
15 correlative rights?

16 A. Yes, sir.

17 MR. COUNTS: Mr. Chairman, I have no further questions.

18 MR. CHAIRMAN: Questions, members of the Board?

19 MR. HARRIS: I was just curious as to -- well, I guess
20 locations. This I notice is very close to the edge. Is
21 there a reason why it couldn't be more centered -- the
22 well location plat, PCC-313?

23 MR. COUNTS: Yes, sir. The location is close to the edge but
24 it is within the interior boundary prescribed by the Nora
25 coalbed methane field rules which allows for 300 foot

1 offset -- or 300 foot buffer zone. It is inside that 300
2 foot buffer zone.

3 MR. CHAIRMAN: This is in the Nora coalbed field?

4 MR. COUNTS: Yes, sir.

5 MR. MCGLOTHLIN: Mr. Counts, on the well location plat where
6 is Dickenson County and Russell County in regards to your
7 line? I'm totally confused.

8 MR. COUNTS: Well, it looks like it follows State Route 635.
9 I'm not sure if that's the case or not.

10 MR. MCGLOTHLIN: You have some other bold lines. I didn't
11 know if they were depicting the county lines or what.

12 MR. BAKER: Slightly below the well location itself running in
13 a westwardly direction almost following the boundary
14 line. It's very difficult to depict, but it --

15 MR. COUNTS: The location itself is in Dickenson County.

16 MR. BAKER: The dashed line is the county line.

17 MR. MCGLOTHLIN: And then I've got dashed lines going every-
18 where.

19 MR. COUNTS: Which dashed line?

20 MR. MCGLOTHLIN: The black one I bet.

21 MR. CHAIRMAN: Would you please repeat the formations to be
22 produced one more time for us. It's not identified in
23 the application as such. Could you identify those?

24 MR. DAHLIN: We would request all Pennsylvania age coals from
25 the top of the Raven formation including all splits to

1 the top of the red and green shells.

2 MR. MCGLOTHLIN: Could you give us a footage elevation on
3 that?

4 MR. COUNTS: We can do that -- Mr. McGlothlin, it's kind of
5 tough. With the permit -- and we can indicate that I
6 think in terms of the permit. What we're trying to do
7 here effectively is to have an interval which obviously
8 we've got twenty different potential coal seams and a lot
9 of un-named seams, etcetera. What we're attempting to do
10 is to make sure that if at some point in time someone
11 doesn't come back and we have a problem where by because
12 a particular seam wasn't named that the allegation is
13 made that that seam wasn't spaced. So that's why we're
14 trying to include basically all coalbed methane seams
15 between those intervals.

16 MR. MCGLOTHLIN: Is that starting at the below drainage coal
17 down or --

18 MR. DAHLIN: That's the intent. Occasionally some of the coal
19 seams, the Raven, Jaw Bone, Tiller, will be either above
20 or below drainage. We have completions in those forma-
21 tions.

22 MR. COUNTS: And we're also trying to make sure that our
23 request for relief is also consistent with the relief
24 granted by the Nora coalbed methane field rules.

25 MR. CHAIRMAN: That's what we needed to know. Field rules are

1 specific as to what is allowable. Any other questions?

2 MR. COUNTS: I request that the application for the force
3 pooling of PC-313 be approved by the Board.

4 MR. MCGLOTHLIN: Mr. Chairman, I move that we approve this
5 application.

6 MR. CHAIRMAN: A motion to approve.

7 MR. KELLY: Second.

8 MR. CHAIRMAN: A motion and a second. Any other discussion?

9 All in favor signify by saying yes. (ALL AFFIRM.)

10 Opposed say no. (NONE.) It's a unanimous approval.

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1 ITEM XXI

2
3 MR. CHAIRMAN: The next item on the agenda is a petition to
4 force pool by Equitable Resources Exploration for V-1831,
5 docket number VGOB-93/01/19-0315. We would ask that any
6 of the parties present today that wish to address the
7 Board to come forward at this time. This is Board Item
8 XXI. The record will there are no other parties identif-
9 ying themselves. Mr. Counts, you may proceed.

10 MR. COUNTS: I'd like to again call Mr. Dennis Baker. I'll
11 remind Mr. Baker that he's been sworn and also that his
12 testimony as an expert witness has been accepted by the
13 Board on this date with respect to these matters.
14

15 DENNIS BAKER

16 a witness who, after having been previously sworn, was
17 examined and testified as follows:
18

19 DIRECT EXAMINATION

20
21 BY MR. COUNTS:

22 Q. Mr. Baker, does Equitable own drilling rights within unit
23 V-1831?

24 A. Yes they do.

25 Q. And does the proposed unit depicted at Exhibit A include

1 all acreage within 1,320 feet of proposed well V-1831?

2 A. Yes, it does.

3 Q. Would you indicate for the Board Equitable's operating

4 interest within this unit?

5 A. 86.68 percent being leased.

6 Q. And would you also similarly indicate the interest of the

7 other and the status of those interests?

8 A. Remaining 13.32 percent being unleased.

9 Q. Prior to filing the application were efforts made to

10 contact each of the respondents in an attempt to work out

11 an agreement regarding the development of these units?

12 A. Yes, there was.

13 Q. And subsequent to the filing of the application have you

14 continued to attempt to reach an agreement with the

15 respondents listed at Exhibit B?

16 A. Yes, we have.

17 Q. Are you also familiar with the fair market value of

18 drilling rights in these units and the surrounding area?

19 A. Yes.

20 Q. Would you advise the Board as to what those terms are?

21 A. \$5 per acre consideration, five year term, one-eighth

22 royalty.

23 Q. In your opinion do the terms you've testified to repres-

24 ent the fair market value of and a fair and reasonable

25 compensation to be paid for drilling rights within this

1 unit?

2 A. Yes, sir.

3 Q. Do you also recommend that the respondents listed at

4 Exhibit B be allowed the following options with respect

5 to their ownership interest within the unit; 1: Partici-

6 pation. 2: Cash bonus of \$5 per net mineral acre plus a

7 one-eighth of eight-eighths royalty or 3: To participate

8 as a carried interest owner?

9 A. That is correct.

10 MR. COUNTS: Mr. Chairman, we've presented certain testimony

11 previously with respect to due diligence, parties sought

12 to be force pooled, and t' manner of elections with

13 regard to VGOB-92/12/15-0296. We would request that that

14 be incorporated by reference into the testimony for this

15 hearing -- this matter.

16 MR. CHAIRMAN: Any objection? Okay. It will be incorporated.

17 Q. (Mr. Counts continues.) Mr. Baker, who do you request

18 the Board name operator under the forced pooling order?

19 A. Equitable Resources Exploration.

20 MR. COUNTS: I have no further questions of this witness on

21 this matter.

22 MR. CHAIRMAN: Members of the Board, do you have any ques-

23 tions?

24 (Witness stands aside.)

25 MR. CHAIRMAN: Call your next witness.

1 MR. COUNTS: Mr. Chairman, we do not wish to revise Exhibit B
2 with respect to the parties, but we would like to revise
3 it with respect to a correction in terms of the interests
4 leased which we've already testified to. But nonethe-
5 less, we'd like to revise Exhibit B to reflect the same.
6 Mr. Baker.

7 MR. BAKER: The percentage of interest shown on Page 2 of
8 Exhibit B I believe in the original application showed
9 13.15718 whereby a digit was omitted and we have revised
10 copies reflected the correct percentage.

11 MR. COUNTS: Mr. Chairman, if it please the Board, I'll
12 continue with my next witness. I'd like to call again
13 Mr. Bob Dahlin. I'll remind Mr. Dahlin that he's been
14 previously sworn and that his testimony as an expert
15 witness has previously been accepted by the Board with
16 respect to matters on today's docket.

17
18 BOB DAHLIN

19 a witness who, after having been previously sworn, was
20 examined and testified as follows:

21
22 DIRECT EXAMINATION

23
24 BY MR. COUNTS:

25 Q. Mr. Dahlin, what's the total depth of the proposed well

1 under Equitable's plan of development?

2 A. 4,370 feet.

3 Q. And what formations specifically does Equitable intend to
4 produce from?

5 A. Devonian Shells, Berea, Wier, Raven Cliff, Big Line and
6 the Max.

7 Q. Do you anticipate that this depth will be sufficient to
8 penetrate and test these common sources of supply and
9 it's subject formations?

10 A. Yes, sir.

11 Q. Notwithstanding these formations which you've just
12 specified are you requesting that the Board force pool
13 all non-coalbed methane formations in this well bore from
14 the surface of the ground to the total depth drilled?

15 A. Yes, we do.

16 Q. What's your estimated reserves of the unit, Mr Dahlin?

17 A. We've assigned 315 million cubic foot of gas to this
18 drilling unit.

19 Q. Are you familiar with the well costs for the proposed
20 initial well unit under Equitable's plan of development?

21 A. Yes, sir.

22 Q. Has an AFE recently been prepared or reviewed and revised
23 and submitted to the Board?

24 A. Yes, sir.

25 Q. Was this AFE prepared by an engineer knowledgeable in the

1 preparation of AFEs and knowledgeable in regard to well
2 costs in this area?

3 A. Yes, it was.

4 Q. Does this AFE represent a reasonable estimate of the
5 reasonable well costs for proposed initial unit well
6 under Equitable's plan of development?

7 A. It does.

8 Q. Would you indicate to the Board the estimate dry hole as
9 completing well costs?

10 A. Dry hole cost is \$124,950. Completed well cost are
11 estimated at \$221,150.

12 Q. Mr. Dahlin, in your professional opinion will the
13 granting of this application be in the best interest of
14 conservation, prevention of waste, and protection of
15 correlative rights?

16 A. Yes, sir, it would.

17 MR. COUNTS: No further questions, Mr. Chairman.

18 MR. CHAIRMAN: Any questions, members of the Board?

19 MR. COUNTS: We'll submit a signed copy of the AFE.

20 MR. CHAIRMAN: Okay. Any other witnesses?

21 MR. COUNTS: No, sir.

22 MR. CHAIRMAN: The plat that you have showing the Federal
23 ownership of surface, what kind of -- are they leased?
24 Are you on Federal land? What's going on here?

25 MR. COUNTS: It looks like a USA tract with respect to surface

1 interest and coal interest but not conventional gas
2 rights. Those conventional gas rights are under lease to
3 A&R which has been assigned to Equitable Resources. I
4 believe that's correct.

5 MR. CHAIRMAN: It says Jackson District Office of Department
6 of Interior. Is there any particular group with the
7 Department of Interior? Do you know?

8 MR. TALBOT: This is on the Flannagan Reservoir and a
9 surface use and occupancy permit has been submitted to
10 the BLM and Flannagan Reservoir corp of engineers of
11 Huntington and Jackson, Mississippi in addition to the
12 estate from the Commonwealth of Virginia.

13 MR. CHAIRMAN: What's the status of the permit on this?

14 MR. TALBOT: The application was submitted last week, I
15 believe. There's a current application on file.

16 MR. CHAIRMAN: Will you supplement that application -- I'm
17 kind of reaching beyond the Board here -- but supplement
18 that application with this material from the Federal once
19 you receive the land use permit?

20 MR. TALBOT: Do I send copies of that to the --

21 MR. CHAIRMAN: Do you supplement your application with that?

22 MR. TALBOT: No, sir, not unless requested. We could provide
23 a copy if necessary.

24 MR. CHAIRMAN: It's on part of the permitted area, though,
25 right? All this is permitted area?

1 MR. TALBOT: It's part of the Corp of Engineers' property
2 which requires surface use permitting any time you
3 operate on the Corp of Engineers. It's similar to the
4 Forest Service.

5 MR. FULMER: Usually our application trail what they've submit
6 to them, but they have specifications as to how the roads
7 are going to be build or what type of gates. It happens
8 to go beyond our statute.

9 MR. TALBOT: And actually they're even similar at this point
10 now after revised regulations with the Commonwealth of
11 Virginia. However, the Corp of Engineers through their
12 bureaucracy and different departments. We need their
13 approval from the different department beginning at the
14 reservoir site itself -- the District Office in Hunting-
15 ton and the office in Jackson, Mississippi.

16 MR. COUNTS: Mr. Chairman, I'm just concerned so that I can
17 basically anticipate this in the future, with respect to
18 what the Board's concern is with respect to the surface
19 tracts in conjunction with the forced pooling here?

20 MR. CHAIRMAN: You mean why I was asking the questions along
21 the line of the Federal?

22 MR. COUNTS: Yes, sir.

23 MR. CHAIRMAN: Just to make sure that we had the appropriate
24 agency identified. It just said U.S. Department of
25 Interior and that's a big place. If we sent something in

1 with a deadline to respond and all that I didn't note
2 that it gave us a name -- a particular person coming to
3 the attention to. But I just wanted to discover to make
4 sure that we had as good a contact as possible because
5 something could lay there 30 days before it ever got out
6 of the first office that received it perhaps. And then
7 the Board could perhaps be faced -- and the company --
8 dealing with after the fact if it's something that hadn't
9 been properly identified and mailed to and all that. So
10 I'm just trying to make sure that we have as good and
11 comprehensive information on that as possible.

12 MR. TALBOT: All parties were notified, however, all green
13 cards have not been received.

14 MR. COUNTS: I sometimes forget that the Virginia Oil and Gas
15 Act requires notification nonetheless to parties that
16 are not necessarily interested in the force pool. But
17 the notification is required nonetheless. So thank you.

18 MR. CHAIRMAN: Any other questions, members of the Board?

19 MR. KELLY: I would move that the petition be approved as
20 submitted.

21 MR. CHAIRMAN: A motion to approve.

22 MR. MCGLOTHLIN: Second.

23 MR. CHAIRMAN: We did make it subject to submitting the
24 information --

25 MR. KELLY: Subject to required information.

1 MR. CHAIRMAN: We have a motion and a second. Any further
2 discussion? If not, all in favor signify by saying yes.
3 (ALL AFFIRM.) Opposed say no. (NONE.) It's a unanimous
4 approval. The Board will reconvene at 9:00 A.M. tomorrow
5 morning.

6 MR. COUNTS: Mr. Chairman, let me ask one question. I have
7 one witness here, Mr. Keith Horton, and I have two
8 additional location exceptions on the docket. For the
9 convenience of this witness in terms of coming over for
10 these hearings would it be possible -- I don't think
11 these location exceptions would take that much time. If
12 we could take those out of order. I know our next item
13 is XXIII on the agenda which is a force pooling. But I
14 do have two location exceptions and if at all possible
15 I'd like to limit the inconvenience on my expert witness
16 as much as possible, particularly since I'm not compen-
17 sating him for his testimony.

18 MR. CHAIRMAN: I promised these folks I would get them out of
19 here, too. I'll leave it to the Board, if you want to
20 consider. But has said we were going to finish up. So
21 I'm staying with that we said we were going to do. As
22 far as I'm concerned we're through. If you all want to
23 hear them we'll hear them.

24 MR. EVANS: If it's okay with everybody else I'm willing to
25 stay. How long are we going to be here?

1 MR. COUNTS: I think it would be like ten or fifteen minutes
2 maybe. I wonder if it might be possible, Mr. Chairman,
3 simply to put on Mr. Horton's testimony individually and
4 then have my other witnesses testify tomorrow?
5 MR. CHAIRMAN: Well, we'll do that because you're going to
6 basically just be dealing with the coal testimony.
7 MR. COUNTS: That is correct.
8 MR. CHAIRMAN: Okay. Let's do it that way.
9 MR. COUNTS: Thank you very much.
10 MR. CHAIRMAN: Which items are we talking about, Mr. Counts?
11 MR. COUNTS: Those will be Item XIV on the docket, VGOB-
12 93/01/17-0318 and Item XV on the docket, VGOB-93/01/17-
13 0319.
14 MR. CHAIRMAN: We'll hear the testimony of this one witness
15 and then we'll adjourn for the day.
16 MR. COUNTS: I'd like to introduce as Exhibit A and also, Mr.
17 Chairman, I believe it would be convenient to consolidate
18 these two matters in terms of Mr. Horton's testimony?
19 MR. CHAIRMAN: Sure. That's fine.
20 MR. COUNTS: I can handle these in the order that I handed
21 them out to the Board. Note that we are combining Items
22 XXIV and XXV on the docket with respect to well V-2676
23 and V-2693. I'd like to call Mr. Keith Horton. I'll
24 remind Mr. Horton that he's previously been sworn and
25 that his testimony has been accepted by the Board on this

1 date with regard to the items on this docket.

2
3 KEITH HORTON

4 a witness who, after having been previously sworn, was
5 examined and testified as follows:

6
7 DIRECT EXAMINATION

8
9 BY MR. COUNTS:

10 Q. Mr. Horton, are you familiar with the application for
11 location exceptions and the well permit applications
12 filed by Equitable with respect to wells 2693 and 2676?

13 A. Yes, I am.

14 Q. Are you familiar with each of these locations as it may
15 relate to mining operations, topography, and effective
16 land management practices?

17 A. Yes, I am.

18 Q. Mr. Horton, is Penn-Virginia the royalty owner as well as
19 a working interest owner in these subject wells?

20 A. Yes, we are.

21 Q. And are those 100 percent Penn-Virginia Resources' wells?

22 A. That is correct. All are 100 percent.

23 Q. You testified before with regard to this Board that Penn-
24 Virginia is involved in the process of selecting loca-
25 tions for wells which Equitable will operate and you've

1 also indicated that several of the considerations and
2 factors considered by Penn-Virginia in approving these
3 locations or not approving these locations including coal
4 with respect to whether active mining or not, you're
5 protecting your coal reserves, safety, topography,
6 drainage, and accommodation of oil and gas interest, is
7 that correct, sir?

8 A. That is correct.

9 Q. Starting with Exhibit A regarding well 2676 would you
10 indicate for the Board the factors that you've given
11 consideration to and those factors which require the well
12 being located at this particular location?

13 A. Principally there are two primary criteria for locating
14 2676 at it's shown location. One is the mine works shown
15 on Exhibit A, the Emboden Seam, Prescott #2 mine operated
16 by Westmoreland Coal Company on a lease from Penn-
17 Virginia Resources. The mine is an active main line
18 hallway and we had to offset to avoid penetration of
19 those mine workings. Also there is a surface minable
20 reserve immediately to the southwest of this particular
21 location which precludes moving it in that particular
22 direction. So those were the two primary functions as
23 well as topography and overlying state highway between
24 the communities of Osaka and Roda for safety precautions.

25 Q. Mr. Horton, is this also a development well which is

1 primarily being drilled as a result of location of
2 adjacent well bores?

3 A. That is correct.

4 Q. Is it your opinion that this location is the only
5 location that this well could be drilled safely and
6 instill effectively recovery of the reserves underlying
7 this area?

8 A. That is correct.

9 Q. Do you support Equitable's application for the location
10 exception?

11 A. Yes, we do.

12 Q. With respect to 2693 would you indicate for the Board the
13 considerations --

14 MR. COUNTS: Let me first ask the Board if there are concerns
15 or questions with respect to 2676?

16 MR. CHAIRMAN: Questions, members of the Board? Proceed.

17 Q. (Mr. Counts continues.) With respect to 2693 would you
18 similarly indicate for the Board the considerations
19 dictating this location?

20 A. Principally no active mine works surround this particular
21 location. However, you'll note on the exhibit we have
22 attempted to show where the well would have to located to
23 comply with the 2,640 foot spacing between wells which
24 would require 2693 to be moved almost 2,000 feet to the
25 north -- almost due north. To accommodate that factor

1 you'll notice we've identified the 14 seam outcrop, the
2 High Splint seam outcrop, and the Morris seam outcrop,
3 all of which contain minable coal seams which would -- if
4 the well were to be situated in this particular location
5 it would result in the loss of minability of some 145,000
6 tons of coal which was not in Penn-Virginia's best
7 interest, nor was it in Westmoreland Coal Company's best
8 interest and they wouldn't approve the location as such.

9 Q. Mr. Horton, would it be further your opinion that if this
10 well was moved some 2,000 feet to the north that it would
11 result in a significant loss of reserves from an oil and
12 gas prospective in between these wells which are identif-
13 ied as receptacle wells?

14 A. That's correct.

15 Q. Is it also your testimony that the -- this map doesn't
16 necessary depict this particular well but that you have a
17 significant reserve which is sited for future mining in
18 both the Morris surface and the Morris deep mining as
19 well as the Hot Springs surface to the north?

20 A. That is correct. Both are planned and operational plans
21 are currently in progress.

22 Q. Would this be the only location acceptable to Penn-
23 Virginia Resources with respect to this particular well?

24 A. Yes, it is.

25 Q. Does Penn-Virginia support Equitable's application for

1 wells 2676 and 2693?

2 A. Yes, we do.

3 Q. In your professional opinion do these requests for
4 location exceptions represent the best possible location
5 which will allow these wells to be drilled consistent
6 with effective land management practices as well as
7 protecting correlative rights and promoting effective --
8 a combination of interest between oil and gas and mineral
9 interest owners?

10 A. Yes, they do.

11 MR. COUNTS: I have no further questions, Mr. Chairman.

12 MR. CHAIRMAN: Questions, members of the Board?

13 (Witness stands aside.)

14 MR. COUNTS: Thank you, Mr. Chairman, for allowing us put Mr.
15 Horton's in today.

16 MR. CHAIRMAN: We will reconvene at 9:00 A.M. tomorrow to
17 conclude the dockets and also to conclude the testimony
18 on these two cases.

19

20 (End of Proceedings for
21 January 19, 1993.)

22

23

24

25

1
2 CERTIFICATE
3

4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON
6

7 I, Deborah J. Bise, Notary Public in and for the Common-
8 wealth of Virginia, at Large, do hereby certify that the
9 foregoing proceedings of the Virginia Gas and Oil Board
10 meeting held on January 19, 1993 in the Conference Room at
11 the 4-H Center, Abingdon, Virginia, were taken by me and that
12 the foregoing is a true and correct transcript of the proceed-
13 ings had as aforesaid to the best of my ability.

14 I further certify that I am not a relative, counsel, or
15 attorney for either party, or otherwise interested in the
16 outcome of this action.
17

18 GIVEN under my hand this 5th day of February, 1993.
19

20 Deborah J. Bise
21 DEBORAH J. BISE
22 NOTARY PUBLIC
23

24 My commission expires September 30, 1996.
25

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VIRGINIA OIL AND GAS CONSERVATION BOARD

HEARING OF JANUARY 20, 1958

9:00 A. M.

IN THE CONFERENCE ROOM

4-H CENTER

ABINGDON, VIRGINIA

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January 20, 1993

This matter came on to be heard on this the 20th day of January, 1993 before the Virginia Gas and Oil Board in the Conference Center at the 4-H Center, Abingdon, Virginia pursuant to Section 45.1-361.19.B and 45.1-361.22.B of the Code of Virginia.

ITEMS XXIV, XXV

MR. CHAIRMAN: This is a continuation of the Gas and Oil Board hearing which began Tuesday, January 19th, 1993. We left off yesterday after hearing discussions from the coal engineer on petitions for well location exceptions. I'll go ahead and call Board Item XXIV, docket number VGOB-93-01/19-0318, and ask any parties that wish to address the Board in this matter to come forward. The record will show there are no other parties except the attorney and representatives for Equitable Resources Exploration. Mr. Counts, you may proceed.

MR. COUNTS: Mr. Chairman, since we consolidated effectively Items XXIV and XXV yesterday would you like to continue with respect to our testimony on those today?

MR. CHAIRMAN: That will be fine.

MR. COUNTS: The record might also show that -- Mr. Chairman, with your permission that no other parties are present

1 that wish to address the Board with respect to Item XXV
2 on the docket, VGOB-93/01/19-0319 as well.

3 MR. CHAIRMAN: That's fine. Thank you.

4 MR. COUNTS: Mr. Chairman, I'd now like to call Mr. Lee
5 Talbot.

6
7 LEE TALBOT

8 a witness who, after having been duly sworn, was examined and
9 testified as follows:

10
11 DIRECT EXAMINATION

12
13 BY MR. COUNTS:

14 Q. Mr. Talbot, have you previously testified before this
15 Board and have your qualifications as an expert witness
16 been accepted?

17 A. I have.

18 Q. Do your responsibilities include the lands involved
19 herein and the surrounding area?

20 A. They do.

21 Q. Are you familiar with the application for a location
22 or option to well 2676 and 2693?

23 A. I am.

24 Q. And the relief requested by such applications?

25 A. Yes, sir.

1 Q. Have all interested parties been notified of this hearing
2 as required by the Virginia Gas and Oil Board regula-
3 tions?
4 A. They have by notifications sent to the Virginia Depart-
5 ment of Mines, Minerals, Division of Gas and Oil dated
6 January 7th, 1992 for both wells.
7 Q. That would be January 7th, 1993, correct?
8 A. Correct.
9 Q. Mr. Talbot, would you also indicate for the Board the
10 ownership of the oil and gas underlying wells 2676 and
11 2693?
12 A. Well 2676 is 100 percent Penn-Virginia Resources with 100
13 percent operating rights of Equitable Resources. Well
14 2693 is 100 percent Penn-Virginia Resources with 100
15 percent operating rights of Equitable Resources Explora-
16 tion.
17 Q. Mr. Talbot, is Equitable also the operator of all the
18 receptacle wells to each of these location exception
19 well-50
20 A. Yes, sir, they are.
21 MR. CUNTS: Mr. Chairman, I have no further questions of this
22 witness.
23 MR. CHAIRMAN: Any questions, members of the Board?
24 (Witness stands aside.)
25 MR. CHAIRMAN: For the record, the Board members present today

1 are Kevin McGlothlin, Bill Kelly, Benny Wampler, Ken
2 Evans. Call your next witness.

3 MR. COUNTS: One comment before I call Mr. Dahlin. Mr. Horton
4 testified yesterday and Mr. Talbot has already testified
5 that effectively Penn-Virginia Resources Corporation owns
6 100 percent of the minerals underlying this tract, that
7 Equitable Resources is also the operator of all the
8 receptacle wells, and as a result I would submit to the
9 Board that correlative rights is not an issue and waste
10 is the only issue that really concerns of the Board with
11 regard to these location exceptions in addition to
12 attempting to locate these wells consistent with coal
13 mining considerations. I'd like to call now Mr. Bob
14 Dahlin.

15
16 BOB DAHLIN

17 a witness who, after having been duly sworn, was examined and
18 testified as follows:

19
20 DIRECT EXAMINATION

21
22 BY MR. COUNTS:

23 Q Mr. Dahlin, you're employed by Equitable as a geologist,
24 is that correct?

25 A My job title is operations specialist.

1 Q. And what are your areas in responsibility?

2 A. I predominately coordinate the land, engineering and

3 geology department in accomplishing our drilling prog-

4 rams.

5 Q. And you've previously testified before this Board and

6 your qualifications as an expert witness have been

7 accepted by this Board, is that correct?

8 A. Yes, sir.

9 Q. Do your responsibilities include the lands involved

10 herein within the area surrounding 2676 and 2693?

11 A. Yes, sir.

12 Q. Are you familiar with the location exceptions for these

13 particular wells?

14 A. I am.

15 Q. Mr. Dahlin, we've indicated here that the primary

16 consideration with respect to these location exceptions

17 is waste as well as coal mining considerations. From a

18 waste standpoint would you be able to project the

19 estimated loss of reserves underlying these two units?

20 A. Yes, sir. In the event that the unit would not be

21 drilled we have assigned 400 million cubic foot of gas to

22 drilling unit 2693 and approximately 450 million cubic

23 foot of gas to drilling unit 2676.

24 Q. What formations is Equitable primarily planning on

25 drilling to in this area -- in these two wells?

1 A. Again, these are Devonian Shell, Wier, Berea, Max, Raven
2 Cliff and Big Line locations.

3 Q. Are you requesting that all formations except coalbed
4 methane formations from the surface of the ground to the
5 total depth drilled be covered by any order issued by the
6 Board?

7 A. We would.

8 Q. With the geological considerations and the testimony of
9 Mr. Horton is it your professional opinion that there is
10 no other location which would allow these two wells to be
11 drilled without requiring location exceptions?

12 A. No, sir. There are no other locations available.

13 Q. In your opinion will the granting of these location
14 exceptions be in the best interest of preventing waste,
15 protecting correlative rights, and maximizing recovery of
16 gas reserves underlying 2676 and 2693?

17 A. Yes, sir.

18 MR. COUNTS: I have no further questions of this witness and
19 we have no further witnesses to present before the Board.

20 MR. CHAIRMAN: Any questions, members of the Board?

21 MR. MCGLOTHLIN: Mr. Counts, on your Exhibit showing 2693, the
22 2448, is that a closed well or an existing well?

23 MR. COUNTS: Mr. McGlothlin, that well is listed on our
24 application as being an existing well. It's shown on our
25 plat as being a proposed well and it's somewhat of a

1 hybrid between the two. The well is permitted and
2 operations have commenced. However, the well has not
3 been completed as of yet. So this well is a permitted
4 well. That's the reason why we're requesting the
5 location exception from the standpoint of 2693.

6 MR. CHAIRMAN: Other questions?

7 (Witness stands aside.)

8 MR. CHAIRMAN: You have no further witnesses?

9 MR. COUNTS: No, sir.

10 MR. EVANS: I move that we accept the petition.

11 MR. CHAIRMAN: We have a motion to approve the petition.

12 MR. MCGLOTHLIN: Second.

13 MR. CHAIRMAN: Motion and a second. Any further discussion?

14 All in favor signify by saying yes. (ALL AFFIRM.)

15 Opposed say no. (NONE.) It's a unanimous decision for
16 both VGOB-93/01/19-0318 and 0319.

1 ITEM XXIII

2
3 MR. CHAIRMAN: The next item on the agenda is a petition to
4 force pool by Equitable Resources Exploration for VC-
5 2277. This is docket number VGOB-93/01/19-0317. I'd ask
6 the parties that wish to address the Board in this matter
7 to come forward at this time. The record will show that
8 only the company representatives are present addressing
9 the Board. Mr. Counts, you may proceed.

10 MR. COUNTS: Mr. Chairman, you said that was VC-2277, Item
11 XXIII on the docket?

12 MR. CHAIRMAN: Yes, sir.

13 MR. COUNTS: Just one moment, please. (Pause.) Mr. Chairman,
14 I'd like to call as my first witness in this matter Mr.
15 Dennis Baker.

16
17 DENNIS BAKER

18 a witness who, after having been duly sworn, was examined and
19 testified as follows:

20
21 DIRECT EXAMINATION

22
23 BY MR. COUNTS:

24 Q. Mr. Baker, who are you employed by and in what capacity?

25 A. Equitable Resources Exploration as leasing supervisor.

1 Q. Do your responsibilities involve the lands included
2 herein and the surrounding area?
3 A. Yes, they do.
4 Q. Have you previously testified before this Board as an
5 expert witness and has your testimony been accepted?
6 A. Yes, it has.
7 Q. Mr. Baker, does Equitable own drilling rights involved in
8 this particular unit?
9 A. Yes, we do.
10 Q. And does Equitable seek to force pool the drilling rights
11 underlying this unit as depicted at Exhibit A of the
12 application?
13 A. Yes, sir.
14 Q. Would you indicate for the Board the interest of Equit-
15 able in this unit?
16 A. Equitable Resources has 86.42 percent of the unit leased
17 at this time.
18 Q. And would you indicate any unleased interest?
19 A. 13.58 percent.
20 Q. Are those parties set out at your Exhibit B?
21 A. Yes, they are.
22 Q. Prior to filing the application were efforts made to
23 contact each of these respondents to work out an agree-
24 ment regarding the development of the units involved
25 herein?

1 A. Yes, we have.

2 Q. And subsequent to filing the application have you
3 continued to attempt to reach an agreement with the
4 respondents listed at Exhibit B?

5 A. Yes.

6 Q. And as a result of these efforts do you wish to revise
7 Exhibit B?

8 A. Yes, I do.

9 Q. Would you indicate for the Board the revisions, Mr.
10 Baker?

11 A. Yes. The revised Exhibit B requests that the respondents
12 be dismissed due to the status change of being an
13 unleased interest to a leased. On Page 1 of the exhibit
14 the first one under the heirs of Henry Sutherland, tract
15 3, Verna B. Bowman, the third down, Alice Hunt. Page 2,
16 at the top of the list, Georgia Eden, third down from
17 that, Earl and Marilyn Sharon, second from the bottom,
18 Gary Nolan. Page 3, the last one on the list, Leonard
19 and Eileen Branham. Page 6, second from the top, Jerry
20 and Mary Sutherland. That's all.

21 MR. COUNTS: Mr. Chairman, any questions with respect to
22 revised Exhibit B?

23 MR. CHAIRMAN: Any questions, members of the Board? No
24 questions.

25 Q. (Mr. Counts continues.) Mr. Baker, are you familiar with

1 the fair market value of drilling rights of this unit and
2 the surrounding area?

3 A. Yes, I am.

4 Q. Would you advise the Board as to what those are?

5 A. \$5 per acre consideration, five year term, one-eighth
6 royalty.

7 Q. Do you also request that the respondents listed at
8 Exhibit B and not dismissed at this hearing be allowed
9 the following options with respect to their ownership
10 interest within the unit: 1, Participation. 2. A cash
11 bonus of \$5 per net mineral acre plus a one-eighth of
12 eight-eighths royalty or 3: To elect to be a carried
13 operator under the Virginia Gas and Oil Act?

14 A. Yes. That is correct.

15 MR. COUNTS: Mr. Chairman, with respect to certain questions
16 with respect to due diligence, parties subject to the
17 forced pooling, and the manner of elections we presented
18 certain testimony yesterday with respect to VGOB-
19 92/12/15-0295 and I would request that that be incorpor-
20 ated by reference into this matter.

21 MR. CHAIRMAN: Any objection? Okay.

22 Q. (Mr. Counts continues.) Mr. Baker, who do you request be
23 nominated as operator of this unit?

24 A. Equitable Resources Exploration.

25 MR. COUNTS: Mr. Chairman, I have no further questions of this

1 witness.

2 MR. CHAIRMAN: Questions, members of the Board?

3 (Witness stands aside.)

4 MR. CHAIRMAN: Call your next witness.

5 MR. COUNTS: I call as my next witness Mr. Bob Dahlin. I'll
6 remind Mr. Dahlin he's previously been sworn.

7
8 BOB DAHLIN

9 a witness who, after having been previously sworn, was
10 examined and testified as follows:

11
12 DIRECT EXAMINATION

13
14 BY MR. COUNTS:

15 Q. Mr. Dahlin, are you familiar with the proposed explora-
16 tion development of the unit for this particular well and
17 Equitable's plan of development?

18 A. Yes, sir, I am.

19 Q. Would you indicate for the Board the total depth of the
20 proposed initial well under Equitable's plan of develop-
21 ment?

22 A. It will be drilled to a total depth of 2,343 feet.

23 Q. Would you indicate for the Board what formations you seek
24 to pool?

25 A. We would request to pool all Pennsylvanian age coal seams

1 from the top of the Raven including all splits to the top
2 of the red and green shells.

3 Q. And are those effectively the formations included within
4 Equitable's special field rules for the Nora coalbed
5 methane field?

6 A. They are.

7 Q. Would you indicate for the Board the estimated reserves
8 of this well?

9 A. We've assigned 300 million cubic foot of gas to this
10 drilling unit.

11 Q. Mr. Dahlin, are you also familiar with the well costs for
12 the proposed initial unit well under Equitable's plan of
13 development?

14 A. Yes, I am.

15 Q. Has an AFE been recently prepared and reviewed and
16 submitted to the Board?

17 A. Yes, it has.

18 Q. Was the AFE prepared by an engineer knowledgeable in the
19 preparation of AFEs and knowledgeable in regard to the
20 well costs in this particular area?

21 A. Yes, sir.

22 Q. Does this AFE represent a reasonable estimate of the
23 reasonable well costs for proposed initial unit well
24 under Equitable's plan of development?

25 A. It does.

1 Q. And would you indicate for the Board your estimate dry
2 hole cost?
3 A. Estimated dry hole cost is \$ 66,737.
4 Q. And would you also estimate your completed well cost?
5 A. Completed well cost is \$185,771.
6 Q. Mr. Dahlin, would you also request that any order granted
7 by the Board with respect to the forced pooling of this
8 unit provide that Equitable provide the Board with a copy
9 of a recent AFE signed by an engineer from Equitable
10 Resources?
11 A. Yes, sir.
12 Q. Mr. Dahlin, in your professional opinion will granting of
13 the application be in the best interest of conservation,
14 prevention of waste, and protection of correlative
15 rights?
16 A. Yes, sir, it would.
17 MR. COUNTS: Mr. Chairman, I have no further questions of this
18 witness and no further witnesses to put on before the
19 Board.
20 MR. CHAIRMAN: Questions, members of the Board?
21 (Witness stands aside.)
22 MR. CHAIRMAN: No questions. Do I have a recommendation?
23 MR. KELLY: I would move that the petition be approved as
24 submitted.
25 MR. CHAIRMAN: A motion to approve as submitted.

1 MR. EVANS: Second.
2 MR. CHAIRMAN: Motion and a second. Any further discussion?
3 All in favor signify by saying yes. (ALL AFFIRM.)
4 Opposed say no. (NONE.) The approval is unanimous.
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1 ITEM XXVII

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3 MR. CHAIRMAN: The next item on the agenda is Board Item
4 XXVII, a petition for pooling by Equitable Resources
5 Exploration for V-1824. This is docket number VGOB-
6 93/01/19-0321. We'd ask the parties that wish to address
7 the Board in this matter to come forward at this time.
8 The record will show that there are no other parties
9 other than the company representatives. Mr. Counts, you
10 may proceed.

11 MR. COUNTS: I'd like to call my first witness, Mr. Dennis
12 Baker.

13
14 DENNIS BAKER

15 a witness who, after having been previously sworn, was
16 examined and testified as follows:

17
18 DIRECT EXAMINATION

19
20 BY MR. COUNTS:

21 Q. Mr. Baker, I will remind you that you've previously been
22 sworn. Does Equitable own drilling rights in the units
23 involved in V-1824?

24 A. Yes, they do.

25 Q. Does the proposed unit depicted at Exhibit A include all

1 acreage within 1,320 feet of this well bore?

2 A. Yes, it does.

3 Q. Would you indicate for the Board Equitable's interest in
4 this unit?

5 A. Currently Equitable has 74.9 percent of the interest
6 under lease.

7 Q. And are there other interests which are unleased in this
8 unit?

9 A. Yes, there is. 25.1 percent.

10 Q. Prior to filing the application were efforts made to
11 contact each of the respondents in an attempt to work out
12 an agreement regarding the development of the units
13 involved herein?

14 A. Yes, sir.

15 Q. And have you continued trying to work out with these
16 parties since the filing of the application?

17 A. Yes, we have.

18 Q. As a result of these efforts do you wish to revise
19 Exhibit B?

20 A. Yes, I do.

21 Q. Mr. Baker, would you indicate your revisions for the
22 Board?

23 A. We request the following respondents be dismissed due to
24 status of change from unleased to leased interest.

25 Q. Are you requesting that the interest of the respondent be

1 revised from unleased from leased or that they be
2 dismissed from the application? Just that the status be
3 revised, correct?

4 A. Be revised. Page 1, the last name on the list, Lilly Mae
5 and Gene Stone. Page 3, third from the top, Mable
6 Fields, third from the bottom, Robert L. Hall and David
7 L. Hall. Those are all of them.

8 Q. Those are all your changes in Exhibit B?

9 A. Yes, it is.

10 MR. COUNTS: Mr. Chairman, any questions with respect to
11 revised Exhibit B?

12 MR. CHAIRMAN: Just for clarification again where you read on
13 the third page three of eight, Robert L. Hall and the
14 record shows Robert L. Hall and Dorsey M. Hall. You're
15 representing that you've leased both those parties?

16 THE WITNESS: That is correct.

17 MR. CHAIRMAN: Okay. Any other questions, members of the
18 Board? Did I confuse you? You also said David L. Hall.

19 MR. EVANS: In looking at it I guess my particular -- okay.
20 I'm sorry. My original Exhibit B doesn't match up.

21 MR. COUNTS: Would you explain that for the Board?

22 THE WITNESS: The original exhibit listed Helen S. Hall and we
23 found out at a later date that there was two additional
24 children of Alfred Hall. These were the two individuals.

25 MR. EVANS: Okay.

1 MR. MCGLOTHLIN: How would this change the percentages of
2 leased and unleased?
3 THE WITNESS: Basically these two individuals did not change
4 the percentage from the standpoint of Helen S. Hall's
5 original percentage.
6 MR. MCGLOTHLIN: You've now leased some that you didn't have
7 leased. How does that change the -- what's the numbers
8 now?
9 THE WITNESS: The number of interest that we have under lease
10 now being 74.9 percent.
11 MR. MCGLOTHLIN: The four people that you just read off, were
12 they previously leased -- any of these? I might have
13 missed something.
14 THE WITNESS: The interest on Page 1, Lilly Mae and Gene Stone
15 is now leased.
16 MR. MCGLOTHLIN: They were not leased before?
17 THE WITNESS: That is correct. And also the interest of Mable
18 Fields on Page 3.
19 MR. MCGLOTHLIN: And the other two were leased previously?
20 THE WITNESS: The other two were not leased. However, their
21 interest was shown as being owned by Helen Hall in the
22 original application.
23 MR. MCGLOTHLIN: Okay. The figures didn't add up at the end.
24 That was what I was trying to come up with. Thank you
25 MR. CHAIRMAN: Any other questions? You may proceed.

1 Q. (Mr. Counts continues.) Mr. Baker, are you familiar with
2 the fair market value of drilling rights in this unit and
3 the surrounding area?
4 A. Yes, I am.
5 Q. Would you advise this Board as to what those are?
6 A. \$5 per acre consideration, a five year term, one-eighth
7 royalty.
8 Q. In your opinion do these terms represent the fair market
9 value of and a fair and reasonable compensation to be
10 paid for drilling rights within this unit?
11 A. Yes.
12 Q. And with respect to the allowances provided the respond-
13 ents listed at Exhibit B do you request that they be
14 allowed the following options with respect to A:
15 Participation. B: A cash bonus of \$5 per net mineral
16 acre plus a one-eighth of eight-eighths royalty. C: To
17 participate as a carried operator under the Virginia Gas
18 and Oil Act?
19 A. Yes. That is correct.
20 MR. COUNTS: Mr. Chairman, again we request to incorporate
21 into previous testimony certain questions with respect to
22 due diligence and parties sought to be force pooled and
23 manner of elections. And specifically with respect to
24 Item II on the docket, VGOB-92/12/15-0296, we again
25 request that this testimony be incorporated into this

1 hearing as well.

2 MR. CHAIRMAN: Any objections? That will be done.

3 MR. COUNTS: Thank you, Mr. Chairman.

4 Q. (Mr. Counts continues.) Mr. Baker, who do you request be
5 named operator of this forced pooling order?

6 A. Equitable Resources Exploration.

7 MR. COUNTS: Mr. Chairman, I have no further questions of this
8 witness.

9 MR. CHAIRMAN: Questions, members of the Board?

10 (Witness stands aside.)

11 MR. CHAIRMAN: You may proceed.

12 MR. COUNTS: I'd like to call again Mr. Bob Dahlin. I'll
13 remind Mr. Dahlin he's previously been sworn.

14

15 BOB DAHLIN

16 a witness who, after having been previously sworn, was
17 examined and testified as follows:

18

19 DIRECT EXAMINATION

20

21 BY MR. COUNTS:

22 Q. Mr. Dahlin, are you familiar with Equitable's plan of
23 development under this particular unit?

24 A. Yes, I am.

25 Q. What's the total depth of the proposed initial well under

1 Equitable's plan of development?

2 A. Total depth is 4,430 feet.

3 Q. And will this depth be sufficient to penetrate the

4 common source of supply that you anticipate encountering?

5 A. Yes, sir.

6 Q. And would you specify for this Board those specific

7 formations?

8 A. The Devonian Shells, the Berea, Wier, Big Line, Max and

9 Raven Cliff formations.

10 Q. Notwithstanding these formations which you just specifi-

11 ed are you requesting that the Board force pool all non-

12 coalbed methane formations in this well bore from the

13 surface of the ground to total depth drilled?

14 A. Yes, sir, we are.

15 Q. Mr. Dahlin, what do you estimate the reserves of this

16 unit to be?

17 A. We anticipate reserves of 700 million cubic foot of gas

18 to this drilling unit.

19 Q. Are you familiar with the well cost for the proposed

20 initial unit well under Equitable's plan of development?

21 A. I am.

22 Q. And has a recent AFE been prepared and submitted with

23 your application for force pooling?

24 A. Yes, sir.

25 Q. Was this AFE prepared by an engineer knowledgeable in the

1 preparation of AFEs and knowledgeable in regard to well
2 costs in this area?

3 A. It was.

4 Q. In your opinion does this AFE represent a reasonable
5 estimate of the reasonable well costs for the proposed
6 initial unit well under Equitable's plan of development?

7 A. Yes, sir, it does.

8 Q. Would you indicate for the Board the anticipated dry hole
9 costs as well as completed well cost?

10 A. Dry hole costs are expected to be \$147,390 with a
11 completed well cost of \$258,030.

12 Q. Mr. Dahlin, in your professional opinion will granting of
13 this application in the best interest of conservation,
14 prevention of waste, and protection of correlative
15 rights?

16 A. Yes, sir.

17 Q. Mr. Dahlin, would you also stipulate that Equitable will
18 provide a signed AFE to the Board within ten days of the
19 date of this hearing?

20 A. We will.

21 MR. COUNTS: Mr. Chairman, I have no further questions of this
22 witness.

23 MR. CHAIRMAN: Questions, members of the Board?

24 MR. MCGLOTHLIN: Mr. Counts, could you ask the question of
25 what formations you're going for again?

1 MR. COUNTS: Yes, we did. We'll be happy to go back over that
2 again. Specify those formations again, sir.
3 THE WITNESS: I have specified them as being Devonian Shells,
4 Berea, Wier, Big Line, Max and Raven Cliff.
5 MR. MCGLOTHLIN: Do you recall your next statement after that?
6 MR. COUNTS: Again we request that not withstanding these
7 formations which you've just specified are you requesting
8 that the Board force pool all non-coalbed methane
9 formations from the surface of the ground to total depth
10 drilled.
11 MR. MCGLOTHLIN: Would that also include the formations
12 between the coal seams in the way you're wording that?
13 MR. COUNTS: Since Equitable has the right to develop any of
14 those sandstone formations it would include all forma-
15 tions capable of producing from the surface of the
16 ground to total depth drilled.
17 THE WITNESS: That's what we represent, yes.
18 MR. MCGLOTHLIN: That might be the way you're doing them all.
19 It's just this morning --
20 MR. COUNTS: We're trying to be consistent. Again there can
21 be different nomenclature for these formations that are
22 used and in the Appalachian Basin rarely can you afford
23 drill one well to, for instance, the Raven Cliff and
24 other well to the Berea within the same unit because it's
25 simply not economic. So what we're trying to do is make

1 sure that we have listed all those formations so that
2 someone doesn't come back at some point in the future and
3 say, "Well, you did force pool these parties but you only
4 force pooled them with respect to these specific forma-
5 tions." We're attempting to be as comprehensive as we
6 can with regard to our application and also our testi-
7 mony.

8 MR. MCGLOTHLIN: Thank you.

9 MR. CHAIRMAN: And they do have to list the formations they
10 intend to produce just for that very reason. To make
11 sure that it's clearly identified. Other questions?

12 MR. EVANS: I might have one question and it really has no
13 relevance other than for my own gratification and
14 identification. In this particular application why did
15 we do the economics out?

16 THE WITNESS: I don't know. You probably got an attachment
17 that shouldn't have been with the --

18 MR. EVANS: I really appreciate it. I just wondering why I'm
19 looking at all your numbers here.

20 MR. CHAIRMAN: Other questions?

21 (Witness stands aside.)

22 MR. MCGLOTHLIN: I move that we approve this application as
23 filed.

24 MR. CHAIRMAN: A motion to approve.

25 MR. KELLY: Second.

1 MR. CHAIRMAN: Motion and a second. Further discussion?
2 All in favor signify by saying yes. (ALL AFFIRM.)
3 Opposed say no. (NONE.) Unanimous approval.
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1 XXVIII

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3 MR. CHAIRMAN: The next item on the agenda, Board Item XXVIII,
4 is a petition for pooling by Equitable Resources Explora-
5 tion for V-2692. This is docket number VGOB-93/01/19-
6 0322. We'd ask that all parties that wish to address the
7 Board in this matter to come forward at this time. The
8 record will show that there are no other parties other
9 than company representatives. Mr. Counts, you may
10 proceed.

11 MR. COUNTS: I'd like to call again Mr. Dennis Baker. I'll
12 remind Mr. Baker that he has previously been sworn.

13
14 DENNIS BAKER

15 a witness who, after having been previously sworn, was
16 examined and testified as follows:

17
18 DIRECT EXAMINATION

19
20 BY MR. COUNTS:

21 Q. Mr. Baker, does Equitable own drilling rights involved in
22 unit V-2692?

23 A. Yes, they do.

24 Q. Would you state for the Board Equitable's interest within
25 this unit?

1 A. Equitable has 99.66 percent interest leased at this time.
2 Q. Are you familiar with the ownership of drilling rights of
3 parties other than Equitable underlying this unit and
4 would you indicate those for the Board?
5 A. Yes. We have an unleased interest of .34 percent.
6 Q. Prior to filing your application for forced pooling were
7 efforts made in an attempt to work out an agreement
8 regarding the development of this unit?
9 A. Yes, there was.
10 Q. Subsequent to filing the application have you continued
11 to reach an agreement with the respondents listed at
12 Exhibit B?
13 A. Yes.
14 Q. As a result of these efforts do you wish to revise
15 Exhibit B?
16 A. Yes, I do.
17 Q. Mr. Baker, would you indicate those revisions for the
18 Board?
19 A. The revision is to be from an unleased interest to a
20 leased interest on Page 2, second from the bottom,
21 Katherine Sue Thomason and her husband Tommy. That's the
22 only interest.
23 MR. COUNTS: Mr. Chairman, any questions with respect to
24 revised Exhibit B?
25 MR. CHAIRMAN: Any questions, members of the Board? You may

1 proceed.

2 Q. (Mr. Counts continues.) Mr. Baker, are you familiar with
3 the fair market value of drilling rights in this unit and
4 the surrounding area?

5 A. Yes.

6 Q. Would you advise this Board as to what those are?

7 A. A \$5 per acre consideration, five year term, one-eighth
8 royalty.

9 Q. In your professional opinion do these terms you've
10 testified to represent the fair market value of and a
11 fair and reasonable compensation to be paid for drilling
12 rights within this unit?

13 A. Yes.

14 Q. Do you recommend that the respondents listed at Exhibit B
15 and not dismissed at this hearing be allowed the follow-
16 ing options with respect to their ownership interest
17 within the unit 1: Participation. 2. A cash bonus of \$5
18 per net mineral acre plus a one-eighth of eight-eighths
19 royalty. 3: To participate as a carried operator under
20 the terms of the Virginia Gas and Oil Act?

21 A. Yes. That is correct.

22 MR. COUNTS: Mr. Chairman, with regard to certain testimony
23 already put on with respect to due diligence, the parties
24 sought to be force pooled and manner of elections that
25 was provided with regard Item II on the docket, VGOB-

1 92/12/15-0296 we request, if it please the Board, that
2 that testimony be incorporated by reference into this
3 hearing.

4 MR. CHAIRMAN: It will be.

5 MR. COUNTS: Thank you, Mr. Chairman.

6 Q. (Mr. Counts continues.) Mr. Baker, who do you request be
7 named operator of this unit?

8 A. Equitable Resources Exploration.

9 MR. COUNTS: Mr. Chairman, no further questions of this
10 witness.

11 MR. CHAIRMAN: Questions, members of the Board?

12 (Witness stands aside.)

13 MR. CHAIRMAN: You may proceed.

14 MR. COUNTS: I'd like to call again Mr. Bob Dahlin. I'll
15 remind Mr. Dahlin that he's previously been sworn.

16
17 BOB DAHLIN

18 a witness who, after having been previously sworn, was
19 examined and testified as follows:

20
21 DIRECT EXAMINATION

22
23 BY MR. COUNTS:

24 Q. Mr. Dahlin, are you familiar with Equitable's plan of
25 proposed development for this unit?

1 A. Yes, sir, I am.

2 Q. Would you indicate for the Board the total depth of the
3 proposed initial well under Equitable's plan of develop-
4 ment?

5 A. 4,500 feet.

6 Q. Will this be a sufficient depth to penetrate the common
7 source of supply anticipated to be encountered underlying
8 this well bore?

9 A. Yes, sir, it will.

10 Q. What are the estimated reserves of this unit, Mr. Dahlin?

11 A. We've assigned approximately 500 million cubic foot of
12 gas to this drilling unit.

13 Q. Are you familiar with the well costs of proposed initial
14 unit well under Equitable's plan of development?

15 A. Yes, sir.

16 Q. Has an AFE recently been prepared and submitted to the
17 Board as an exhibit to it's application for force
18 pooling?

19 A. Yes.

20 Q. Was this AFE prepared by an engineer knowledgeable in the
21 preparation of AFEs and knowledgeable in regard to well
22 costs in this area?

23 A. Yes, it was.

24 Q. Does this AFE represent a reasonable estimate of the
25 reasonable well costs in proposed initial unit well under

1 Equitable's plan of development?

2 A. Yes, sir.

3 Q. Would you indicate for the Board the estimated dry hole
4 costs as well as completed well cost?

5 A. Dry hole costs are anticipated to be \$124,100. Completed
6 well costs are expected to be \$227,800.

7 Q. Mr. Dahlin, in your professional opinion will the
8 granting of the application be in the best interest of
9 conservation, prevention of waste, and the protection of
10 correlative rights?

11 A. Yes, sir.

12 Q. Mr. Dahlin, would you also stipulate that Equitable
13 Resources will be providing to the Board within ten days
14 from the date of this hearing a signed AFE reflecting
15 these well costs?

16 A. We will.

17 MR. COUNTS: Mr. Chairman, I have no further questions of this
18 witness and no further witnesses to present on this
19 matter.

20 MR. CHAIRMAN: Questions, members of the Board? Could you
21 identify the formations?

22 Q. (Mr. Counts continues.) Mr. Dahlin, would you indicate
23 the formations anticipated to be encountered in this
24 well?

25 A. Yes, sir. We would request that the Board pool the

1 Devonian Shells, Berea, Wier, Big Line, Max and Raven
2 Cliff formations.

3 Q. And notwithstanding these specific formations would you
4 request that any order issued by the Board force pool all
5 non-coalbed methane formations from the surface of the
6 ground to total depth drilled?

7 A. We would.

8 MR. CHAIRMAN: Any further questions?

9 (Witness stands aside.)

10 MR. MCGLOTHLIN: I move that we approve the petition as
11 submitted.

12 MR. CHAIRMAN: A motion to approve the petition.

13 MR. EVANS: Second.

14 MR. KELLY: Second.

15 MR. CHAIRMAN: A motion and a second. Further discussion?

16 All in favor signify by saying yes. (ALL AFFIRM.)

17 Opposed say no. (NONE.) Unanimous approval.

18 MR. COUNTS: Mr. Chairman, before proceeding with Item XIX I'd
19 like to beg for the Board's indulgence for just a moment
20 of it's time, if I may. I'd like to take this oppor-
21 tunity to introduce to the Board -- I think some of you
22 may have already met Mr. Doug Tweed to my far right with
23 Hunter, Smith & Davis and Mr. Jim Kiser immediately to
24 Mr. Tweed's left. These gentlemen will be basically
25 handling Equitable's regulatory applications before the

1 Board in the future. They have had a continuing re-
2 lationship with Equitable Resources for a number of
3 years and my firm has had a relationship with Hunter,
4 Smith & Davis as well. It's my intention to take
5 basically at least a year sabbatical which is motivated
6 primarily for health reasons. It probably has nothing
7 whatsoever to do with the stress you guys have caused me
8 up there. But nonetheless I can assure you that Hunter,
9 Smith & Davis is an outstanding law firm and I think that
10 you'll enjoy very much working with these folks. I will
11 be consulting with them for a significant length of time.
12 So don't start celebrating too quickly because I'll still
13 be around. But I do want to take the opportunity to
14 introduce these folks to you and let you know that they
15 will be working with you in the future. And I promise
16 you that they will be very cooperative and I think that
17 you'll be very pleased with the relationship that
18 develops. I'd also like to take this opportunity to
19 thank the Board on a more personal note. I think that --
20 well, it seems like it's been at least seven years today
21 but it feels like seventy sometimes. I'm convinced -- if
22 you all recall what I looked like before we started I
23 started to have a full head of hair at that point in
24 time. It's diminished greatly as a result of Mr.
25 McGlothlin in particular. Just kidding, Kevin. But I

1 really truly feel that you folks should take a great
2 deal of pride in the fact that Virginia without question
3 is the leading conservation state in the Appalachian
4 Basin. I think that you afford more surface owner
5 protection. Virginia affords more protection with
6 respect to correlative rights and waste issues that are
7 conservation principles that are by and large ignored by
8 other states within the Appalachian Basin. I think that
9 you'll find that other states in the Appalachia Basin now
10 look to Virginia as the model regulations and model
11 statutes for conducting oil and gas operations. For also
12 showing and demonstrating that oil and gas operations can
13 be conducted in a manner which allows accommodation of
14 other estates including the coal owners. This Board's
15 been faced with some tremendously complex issues over the
16 last several years with hundreds of millions dollars
17 worth of development riding upon the decisions of the
18 Board. And I would simply just like to commend the Board
19 on the role that it's played with respect to that. I
20 think that all the operators in Virginia and the industry
21 as a whole has benefited. You've got an excellent
22 Department of Mines, Minerals and Energy from the
23 standpoint of also Mr. Fulmer and his staff that I think
24 do an excellent job. I was in Europe recently and I can
25 even tell you that some of the countries in Europe are

1 looking at Virginia regulations which I think that you
2 all should feel quite proud of. I'm speaking in particu-
3 lar with regard to Czechoslovakia right now. I will be
4 working also on a consultant basis on coalbed methane
5 internationally and I really would like to say that I
6 have tremendously enjoyed our relationship and it's been
7 very much my pleasure to have worked with you. Thank
8 you.

9 MR. CHAIRMAN: Thank you, Mr. Counts. Those were kind words.
10 We've enjoyed working with you. Thank you very much.
11 We'll take a five minute recess before we hear the last
12 item on the agenda.

13 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)
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ITEM XIX

MR. CHAIRMAN: The last item on today's agenda is the Virginia Gas and Oil Board on its own motion will determine whether to schedule a future hearing to consider field rules for wells drilled prior to and therefore not covered by Section 45.1-361.17, statewide spacing for wells of the Virginia Gas and Oil Act. This is docket number VGOB-93/01-19-0323. As it says clearly in the published agenda that this is a Board on its own motion item. In a way of background I'd like to provide the Board with some information. This matter is coming before the Board, the matter of spacing and the differences of spacing, the contention that the 1990 Gas and Oil Act imposed the statewide spacing retroactively. It has been an item that's been raised by a number of citizens and specifically raised by the Dickenson County Citizens Committee. The Board may recall me providing a copy of a letter from the chairman of that committee. That went out as an oped to a number of the local papers and to a number of the Delegates. I would like just in order to clarify the record here to go ahead and read that letter to the editor into the record. It says, "At a recent Virginia Gas and Oil Board meeting it was revealed that many local citizens who own gas were not

1 receiving the appropriate royalty payments. It seems
2 that in 1985 when the big natural gas development in
3 Southwest Virginia started only those within a 500 foot
4 radius of a gas well collected any royalties on their
5 gas. In 1987 this radius was expanded to 1,250 feet and
6 in 1991 it went to 1,320 feet. The big revelation was
7 that those earlier wells were producing gas from areas
8 well beyond the 500 or 1,250 foot radius. If the truth
9 be known even the 1,320 foot radius from gas wells is
10 inadequate to protect gas owners rights. When the radius
11 of a circle is increased from 500 to 1,320 feet the area
12 is increased seven fold. Royalty payments should match
13 this increase. The chairman of the Virginia Gas and Oil
14 Board when advised of this situation declined to initiate
15 or even contemplate any action to rectify the apparent
16 misappropriation of gas owners property. When I wrote
17 about it to Benny R. Wampler, Assistant Direct for Mining
18 with the Virginia Department of Mines, Minerals and
19 Energy, he said the Virginia Gas and Oil Act of 1990 does
20 not apply retroactively to previous actions on existing
21 wells. Wampler said neither the Board nor the Department
22 have the discretion to require that the royalty radius be
23 extended for wells permitted prior to 1990. If you are a
24 gas owner and there is a deep gas well within 1,320 feet
25 of your property you can bet the well is draining your

1 gas. If you aren't getting royalty payments commensurate
2 with your acreage you're getting robbed. It is time to
3 call the local gas developer and sit down for a talk. In
4 this instance it's every man or woman for themselves.
5 You'll have to look out for your interest. You'll get no
6 help from the state agencies. You better do it today."
7 Signed, Barny Riley, president, Dickenson Count Citizens
8 Committee in Clinchco. I have had a number of meetings
9 with citizens who have had wells drilled under the 500
10 foot spacing and the other spacings and I have had those
11 citizens talk about the drainage -- believe that they are
12 being drained and also feeling that the Gas and Oil Act
13 of 1990 should, in fact, provide or overlay that protec-
14 tion retroactively for those wells whenever they were
15 drilled. Now, to further complete the record on this,
16 Mr. Riley had forwarded this to -- or apparently Delegate
17 Quillen had forwarded this to Frank Munyon, staff
18 attorney with the Division of Legislative Services
19 proposing for a draft legislation. Essentially -- I'll
20 not read all of this -- the excerpts are and it will be a
21 part of the record, Gas and Oil Act establishes a
22 presumption for the distance between gas wells. Prior to
23 the 1990 act the minimum well distances were set by
24 regulations. This distance specified in the 1990 act
25 are the same as those set by regulations for deep wells

1 below 3,000 feet. Owners of correlative rights in a gas
2 pool may petition the Gas and Oil Board for the estab-
3 lishment of field rules in drilling units for the pool or
4 the pooling of interest. Owners of interest in a gas
5 pool who believe that that gas has been withdrawn by a
6 well located on adjacent property may thereby have the
7 Gas and Oil Board determine whether their interests are
8 being protected. Where appropriate the Board has the
9 power to change the well distance requirements on a case
10 by case basis. That was a letter written back to Mr.
11 Riley from Frank Munyon, staff attorney. Based on the
12 interest that has been expressed I felt like the Board on
13 its own motion should take a look at the entire develop-
14 ment that has occurred in Southwest Virginia. I've asked
15 Mr. Fulmer to put together a map and I'm going to ask him
16 now to explain these maps that you see on the wall today
17 in a way of leading into further background on this
18 subject. Mr. Fulmer.

19 MR. FULMER: Thank you, Mr. Chairman. In preparing the maps
20 that you see up here, there's four significant dates that
21 I utilized in regards to permitted wells -- active wells
22 currently that are in production. And those dates are
23 those wells permitted prior to July 1, 1983, those wells
24 permitted after July 1, 1983 and prior to July 1, 1988,
25 those wells permitted after July 1, 1988 and prior to

1 July 1, 1990 and those wells that have been permitted
2 since July 1, 1990. These are all significant dates
3 within the development of the Virginia Gas and Oil Act or
4 the statutes in regard to gas and oil operations in the
5 State of Virginia. Those wells that were permitted prior
6 to July 1, 1983 did not have -- conservation acts was not
7 in place in the State of Virginia. After July 1, 1983
8 the conservation act of the original Virginia Gas and Oil
9 Act was implemented. There was a spacing requirement in
10 regards to 500 foot around the well. There was another
11 spacing in regards to wells drilled -- the distance
12 between wells in regards to mine safety which was 2,500
13 foot. In July 1, 1988 there was implemented a spacing of
14 1,250 feet as being the drainage area by the preponder-
15 ance of the evidence around a well. In July 1, 1990, of
16 course, the Virginia Gas and Oil Act was implemented and
17 at that time it was 1,320 feet spacing. Since 1983 which
18 created the Virginia Oil and Gas Conservation Commission
19 which looks at conservation and correlative rights
20 issues. That was changed in 1990 to the Virginia Gas and
21 Oil Board which is presently in acting legislature. So
22 when I looked at the maps I looked at the dates that the
23 active wells -- and these are active wells that are
24 producing, that are shut in or ones that are permitted.
25 The ones that are plugged are not included in these

1 because they would not count in any sort of situation.
2 Basically the first map on my right is the development
3 which is occurring in Wise County -- has occurred and is
4 now occurring in Wise County in regards to conventional
5 well drilling. This has nothing to do with coalbed
6 methane. The middle map is that of Dickenson County, the
7 development that has occurred in Dickenson County. And
8 then the third one involves -- on the extreme left here
9 -- involves Buchanan County. As far as the color coding
10 on each one of the maps, the green dot represents those
11 that were permitted, drilled and are active prior to
12 1983. The silver dots are those wells which were
13 permitted, drilling and are producing from July 1, 1983
14 to July 1, 1988. The red dots are those wells which were
15 permitted from July 1, 1988 to July 1, 1990. And then
16 the gold dots are those wells which were permitted after
17 July 1, 1990. As a matter of explanation, in the Wise
18 County area there's a lot of gold dots. These dots
19 basically represent those wells that were transferred
20 when Equitable Resources acquired A&R Production Company.
21 So actually that permit is active after the July 1, 1990
22 law although they might have been drilled and permitted
23 since 1983, but they were transferred. So they have an
24 active permit after 1990. At that time the consideration
25 of the distance of 1,320 or 2,640 distance between wells

1 are taken under consideration in the transfer. You'll
2 also notice that some of the wells -- the yellow around
3 the gold -- are cross hatched. These are wells in which
4 the Board has taken under consideration for either a
5 force pooling or location exception. Are there any
6 questions at this point in time from the Board?

7 MR. EVANS: To make sure I've got it right. Prior to July 1,
8 1983 there was no conservation and that's the 500 foot
9 radius?

10 MR. FULMER: No. There was no radius considered at that time.
11 As long as you were on your property you could drill the
12 well.

13 MR. EVANS: And then on July 1, 1983 and up to July 1, 1988 it
14 was 500 foot?

15 MR. FULMER: 500 foot. There was a 500 foot offset.

16 MR. EVANS: And then 2,500 foot for coal?

17 MR. FULMER: From adverse property.

18 MR. EVANS: And then July 1, 1988 it went to 1,250 feet --

19 MR. FULMER: Yes.

20 MR. EVANS: -- to July 1, 1990 at which time it changed to --
21 the new regulation came in and it was at 1,320?

22 MR. FULMER: Right. That's absolutely right. So what I have
23 marked on the map as far as the color coding goes is the
24 sequence in which wells have been permitted and drilled
25 and are active. You'll notice on the Buchanan County map

1 is an overlay and that is the Pilgrim's Knob Field which
2 was adopted by the Board in January of 1991 which set up
3 field units for that particular field. That is currently
4 the only field rule in regards to conventional gas
5 drilling in place at this time. There are several
6 outside of these three counties, particularly Scott and
7 Washington County and some areas down in Lee County,
8 which have provisional drilling unit orders. Those are
9 very confined reservoirs and they're based upon a certain
10 amount of acreage per unit. Is there any other questions
11 you would like to ask?

12 MR. EVANS: Tom how total wells did you -- did you total?

13 MR. FULMER: There's approximately 1,320 wells here. We're
14 dealing with approximately 1,320 wells.

15 MR. EVANS: And all are conventional and completed in differ-
16 ent formations? There was no --

17 MR. FULMER: All are completed in different -- now, one of the
18 things about this spacing rule, prior to 1983 there was
19 no differentiation between formation. You drilled from
20 top to bottom.

21 MR. EVANS: And get out what you wanted to?

22 MR. FULMER: Yes, sir. The conventional pool rule was not in
23 effect.

24 MR. MCGLOTHLIN: Did you happen to break down by number the
25 wells in each one of these categories?

1 MR. FULMER: No, I didn't do that.

2 MR. MCGLOTHLIN: Okay. It appears that the green dots are the
3 prior to -- there's a significant number of green dots up
4 there.

5 MR. FULMER: There is a significant number. Most of them were
6 drilled back in the 70's prior to the 1983 act. One of
7 the things that -- and the reason I didn't count is
8 because we are continually being modified and being
9 transferred which would come under the 1990 act once we
10 did do the transfer. Significantly more or less is the
11 acquisition of A&R by EREX down here. All these wells
12 were transferred.

13 MR. EVANS: They may have, in fact, been drilled considerably
14 earlier than what the gold dot showed?

15 MR. FULMER: Most of the wells were drilled after 1983 and
16 they were on the 1,250. As the Board has seen, when EREX
17 does come in for a location exception you'll find that
18 most of them are drilled on the 1,250 and now they're
19 trying to comply with the 1,320.

20 MR. MCGLOTHLIN: Tom, what were the yellow circles and the red
21 circles again?

22 MR. FULMER: Well, the yellow represent the 1,320. The red
23 circles represent the 1,250. There is a small -- you can
24 hardly detect it. Around the silver dots, that's the
25 500. One other thing I would like to elaborate as far

1 as the maps go, these are done on the basis that you
2 follow state spacing laws. It's not necessarily the
3 actual case. I guess I need to explain that a little bit
4 further. What I'm saying is is that there may be lease
5 agreements in regards to -- there may be 120 acre units
6 around some of these wells. But in regards to state law
7 it would only require the 500 foot.

8 MR. EVANS: It's just a requirement, not --

9 MR. FULMER: That's the minimal requirement that you're
10 looking at. And in most of the cases where you don't
11 have a Board interaction involving a case then the lease
12 agreements or whatever they have will prevail at the
13 time.

14 MR. EVANS: In other words, if they formed a voluntary unit of
15 whatever size it might be more than 500 feet?

16 MR. FULMER: Yes, sir. It may be more than 500 feet. It may
17 be encompassed 1,320 feet -- it would depend on the
18 particular company and what they have -- specifically
19 from a contractual agreement. One of the other things I
20 wanted to try to demonstrate on the map is those areas
21 that are not yet developed. In some of the areas you
22 can tell where expansion is now occurring, especially in
23 the Dickenson County area, around this area here, this
24 area here, up in this section -- up in the northern
25 section.

1 MR. CHAIRMAN: Excuse me. Would you go back to those and
2 identify the approximate location? You're saying an area
3 here --

4 MR. FULMER: Okay. One of the areas of development presently
5 going on is around the Flannagan Dam on the Clintwood
6 quad in this area. Another area is around the Russell
7 Fork River and another area is up around the junction of
8 Flannagan Dam and Russell Fork in the area of the Breaks
9 Interstate Park -- just south of that. That's one
10 pronounced area. On the Wise County map you'll see
11 development proceeding in the north Coeburn area. You'll
12 see development going on in the -- I guess northeast
13 section on what is commonly called the VICC property and
14 the Banner property. Another area of development is
15 along the Black Mountain area in Wise County at which
16 some of applications the Board saw in this hearing did
17 involve. We have had limited development in Buchanan
18 County, basically in the Pilgrim's Knob Field which was
19 set up by the Board as far as field rules go. We have a
20 few wells that have been drilled over there, but not that
21 many since that Board order went into effect.

22 MR. CHAIRMAN: Any other questions, members of the Board?

23 MR. EVANS: This is a historical question that you may or may
24 not have the information on. It would involve drilling
25 prior to 1986. How many wells have been drilled in these

1 three counties that may be inactive, plugged, worked out,
2 whatever else? But how many actual bores have been put
3 down? Do you have that number? You've got 1,320 active.

4 MR. FULMER: We have approximately 1,640 files.

5 MR. EVANS: And the records have been kept since?

6 MR. FULMER: The records have been kept since. We have very
7 little abandonment of wells. We have wells dating back
8 to 1950 that are still actively producing -- that have
9 not become uneconomical. We would be very unlikely to
10 have maybe one plug in a year. Recently we've issued and
11 this is a combination of over the year in all phases of
12 permitting activity we've had 771 permits issued in a
13 year's time -- just this past year. Which includes
14 coalbed methane but they are conventional wells that
15 number around 30 or 40.

16 MR. EVANS: So you have records of 1,600 plus wells -- records
17 that have been kept since when?

18 MR. FULMER: The records date back -- we have records dating
19 back all the way to 1917. They're very skimpy at best
20 but we do have some records or some files in regards to
21 certain information. In fact, one of the oldest wells
22 was drilled in Wise County.

23 MR. MCGLOTHLIN: You're saying approximately 1,640 bores?

24 MR. FULMER: Wells, permits and bore holes -- I hesitate to
25 call them permits because prior to 1950 --

1 MR. MCGLOTHLIN: 1,640 is also CBM -- coalbed methane wells.
2 MR. FULMER: Yeah, total.
3 MR. MCGLOTHLIN: Approximately how many coalbed methane wells
4 have been drilled or permitted?
5 MR. FULMER: We have over 300 -- close to 320 I think the last
6 count I looked at.
7 MR. KELLY: On the 500 foot rule situation prior to 1983 --
8 I'm just trying to remember back that far what the regs
9 were. Essentially that was utilizing notification
10 distances?
11 MR. FULMER: That was notice issue.
12 MR. KELLY: So if you were within 500 feet of an unleased
13 tract you were required to notify anyone within 500 feet,
14 fifteen days for an objection to be filed, and absent an
15 objection you could drill the well?
16 MR. FULMER: Yes. That was the procedure at that time. But
17 in no way was it spacing or correlative rights issue.
18 MR. KELLY: Was not dealt with as a spacing issue at that
19 time?
20 MR. FULMER: No.
21 MR. KELLY: After 1983 -- and I'm trying to remember now how
22 that changed -- it was still 500 feet but --
23 MR. FULMER: It was a 500 feet offset from adverse property.
24 MR. KELLY: But you were required to stay 500 feet from
25 unleased property?

1 MR. FULMER: Right.

2 MR. KELLY: So that essentially functioned as a spacing
3 distance because it wasn't required.

4 MR. FULMER: But it was not actually a correlative rights
5 issue.

6 MR. KELLY: Right, still was a notification or an offset --

7 MR. FULMER: It was still a notification issue.

8 MR. KELLY: -- issue from unleased acreage. We didn't really
9 get into the spacing distances until you got to the
10 1,250.

11 MR. FULMER: Yeah. In 1988 Senator Buchanan's bill took
12 the --

13 MR. KELLY: Which was essentially the 2,500 foot rule which
14 also corresponded to the coal owners objection distance?

15 MR. FULMER: Right. And he added within the statute that in
16 the absence of preponderance of evidence drainage is
17 1,250 feet away from the well and that was added to the
18 statute.

19 MR. KELLY: But that again -- again I'm just trying to
20 remember the history of that. That was somewhat related
21 to the 2,500 foot coal owner objection distance as an
22 attempt to minimize well density in the coal field.

23 MR. FULMER: I was not personally involved in that, but that's
24 what my understanding was.

25 MR. KELLY: So in that respect it was still not a pure spacing

1 issue. It was more related to well density considera-
2 tions and still was not looked at purely as a conserva-
3 tion issue at that time.

4 MR. FULMER: Not as a conservation issue because at the time
5 the Board really did not have conservation regulations to
6 go along with it or rules.

7 MR. KELLY: Right. So until we got to 1990 we really didn't
8 have a period of conservation spacing requirement. And
9 it could be said probably that when you go back to 1983
10 or prior to 1983 many of these areas still hadn't -- that
11 may be some of the Dickenson County areas possibly. But
12 many of these areas hadn't been developed to the extent
13 that you could really apply field rules -- principally
14 for lack of information to define the areas that could be
15 spaced.

16 MR. FULMER: That is correct. I would have to look at it, but
17 I do not believe that even the 1983 act contemplated
18 field rules.

19 MR. KELLY: I don't think so either. I'm just saying that
20 many of these areas, particularly Wise County, were not
21 developed to the extent by 1983 that there had been
22 enough wells drilled to provide adequate information to
23 justify considerations for field rules or spacing
24 requirements.

25 MR. FULMER: In particular Wise County, none of these wells

1 were even developed until 1983.

2 MR. KELLY: And a good part of the development in Dickenson
3 County would probably be in that same situation although
4 it was more heavily drilled and highly developed in Wise
5 County by 1983 certainly.

6 MR. FULMER: If you examine the map you can look at the silver
7 dots which represents those wells permitted after 1983
8 and you can see there's a limited number that was being
9 developed there. By and large this area was drilled
10 prior to 1983. In certain sections we took a random
11 sample of the distance between wells here and by and
12 large they were pretty much in the 1,250 range already --
13 prior even to 1988.

14 MR. EVANS: Again this is just speculation on my part, but I
15 suspect that a good number of those wells were drilled on
16 large acreage blocks such as Clinchfield or other large
17 blocks that coal companies or land companies -- where you
18 would have only been dealing principally with one mineral
19 owner or royalty owner.

20 MR. FULMER: In my limited knowledge as far as ownership goes,
21 in the majority of these case they are on large tracts.
22 The green dots especially. For instance, in Dickenson
23 County the green dots except for a very few of them are
24 all on several large tracts either owned by Pittston, the
25 Steinmans, Steinman Development and so forth. They were

1 all large tracts. In the case of Wise County, that was
2 all on Penn-Virginia large feed tracks.

3 MR. KELLY: It's only been in recent years or the more recent
4 years when the bigger blocks were being drilled up that
5 it became necessary to get out on the edges of those
6 blocks and you got into the areas where smaller tracts --
7 a lot more broken up acreage areas were brought into the
8 development.

9 MR. FULMER: Around 1988/1989 it became quite evident that
10 most of the large blocks had already been drilled up and
11 that the development was proceeding further out into
12 other severed areas or feed areas.

13 MR. EVANS: In other words, smaller --

14 MR. FULMER: Small tracts.

15 MR. EVANS: Smaller tracts with multiple ownership.

16 MR. FULMER: Right, as far as conventional gas drilling goes.

17 MR. CHAIRMAN: Other questions? Thank you, Mr. Fulmer.

18 MR. MCGLOTHLIN: Mr. Chairman, I'd like to commend Mr. Fulmer
19 on his mapping. It's a wonderful work of art.

20 MR. CHAIRMAN: The Board would now allow anyone that wants to
21 address the Board on the specific item of whether or not
22 the Board should schedule future hearings on this matter.
23 Is there anyone present today that wants to address the
24 Board in this regard? Mr. Riley, if you would like to
25 come forward, please.

1 MR. RILEY: My name is Bernard Riley and I'm the author of the
2 letters that Mr. Wampler just read and the letters to the
3 editor and also the recipient of the letter from Mr.
4 Munyon. I'd like to just read a little bit of my reply
5 to Mr. Munyon, if I could.

6 MR. CHAIRMAN: Certainly.

7 MR. RILEY: Just a portion of it, "Your statement that owners
8 of correlative rights may petition the Board strikes at
9 the heart of our objection to current procedures. We
10 feel it is the stated mission of the Board to protect
11 correlative rights. There should be no need for citizens
12 to petition the Board to perform that duty nor should
13 citizens have to travel to Abingdon for such Board
14 proceedings. The Board, no less the DMME, should take
15 the initiative in this matter and assure proper royalty
16 payments to cite a passed procedure as authority to do
17 nothing is unacceptable to citizens. We know the royalty
18 zones are inadequate and we know that no correction is
19 possible without government intervention. We cannot
20 accept continued inertia. All the deep wells were
21 similarly stimulated to produce gas. Why should one
22 individual receive royalties only for gas produced within
23 500 foot of a well while another individual receives
24 royalties from gas produced with 1,320 feet of a similar
25 well." And I might add you don't have to petition the

1 sheriff to investigate a breaking and entering. That's
2 his mission. That's the job. That's what he was put
3 there for. Similarly we feel that's the mission of this
4 Board and the Department of Mines, Minerals and Energy,
5 to see that people are protected and to see that they are
6 treated properly. That's the comments that I have on
7 this particular issue. I'd like to address the Board
8 later before they adjourn on another particular issue.

9 MR. CHAIRMAN: We'll have to have that defined on the other
10 one just to see. We really can't get into matters not
11 published on the agenda today. But we'll be happy to see
12 how that falls off. On this particular discussion, Mr.
13 Riley, just to go back as a commentary, when I had
14 discussions and when I wrote you -- and you feel free to
15 comment on this -- I was conveying to you that the Gas
16 and Oil Act of 1990 became effective July 1, 1990 and
17 that those field rules -- those spacing requirements, the
18 statewide spacing of 1,320 feet did not apply retroactive
19 to all wells drilled prior to that date but was set out
20 as the statewide spacing rules for wells drilled on or
21 after that date and that date forward. And that any
22 difference or distinction from the statewide spacing
23 would have to come from a preponderance of evidence
24 submitted to the Board under a petition to put them
25 closer or anything different from that. Is that the way

1 you understood my conversation to go?

2 MR. RILEY: Well, the way I understood your letter was that
3 the law was specific as far as the distances in 1985,
4 1987 and in 1990 and that the only distances that you
5 were interested in or only distances that you could
6 enforce the law --

7 MR. CHAIRMAN: That the Department could not back and change
8 those distances based on the 1990 act. That's how I
9 represented it. I'm just for the record and for everyone
10 here clarifying that that is how I represented that.
11 And that was based on legal advice that I represented
12 that to you. Now, the Board certainly has authority to
13 establish field rules and that's what the purpose of
14 bringing this issue on forward. There's no doubt that
15 people that have wells drilled at the time that the law
16 said 500 feet have now understood that 1990 at 1,320 foot
17 should give them that same distance as the royalty pay
18 zone. That act does not do that. That act deals with
19 wells drilled on or after July 1, 1990.

20 MR. RILEY: Can I reply to that?

21 MR. CHAIRMAN: Yes.

22 MR. RILEY: I know the act does not do that, but I think the
23 act should do that because those wells are similarly
24 drilled and stimulated. So when that earlier well was
25 only paying royalty within a 500 foot radius that gas was

1 still being drained from a larger area than that and it
2 was coming free and this Board or the previous Board
3 authorized that. We all know how much influence the
4 industry has on the formulation of the laws of Virginia
5 and the rules and regulations of the Department of Mines,
6 Minerals and Energy. And they're the ones, I feel, who
7 were mainly behind that 500 foot. That was put in years
8 ago by Representative Boucher when he was a member of
9 the General Assembly. And then subsequent to that that
10 was enlarged because many of the gas owners petitioned
11 Senator Buchanan, Lord rest his soul, to get that
12 enlarged. But when that 1,250 foot superseded the 500
13 feet anybody who had a well at that time within 1,250
14 foot, they should have been receiving the royalty
15 payments as of the date the 1,250 foot became a law. And
16 similarly when the 1,320 foot came out, anybody within
17 that distance should have started receiving royalty as of
18 that date. But to say just because you happen to be
19 unfortunate enough to have a well drilled 550 feet from
20 you back in 1985 or 1986 and now you're completely
21 written out of the picture I think is grossly unfair and
22 not the intent of this law. This law is to protect
23 people, not to steal from them.

24 MS. RIGGS: Well, the question here appears to me to be just
25 one of statutory construction on whether or not the

1 legislature can retroactively change the law. And I
2 would suspect, even though I was not present, that that
3 probably was considered and for a good reason they chose
4 not to retroactively impose the law because there are
5 rules and constitutional protections against taking away
6 rights once granted. This whole question of the retro-
7 active application of statutes is one that's always
8 considered when you have a change in law and there are
9 reasons why -- legal reasons why the Legislature cannot
10 retroactively impose those changes in law. They can
11 change it today prospectively as this Board can consider
12 what happens from this day forward, but once rights vest
13 constitutionally you cannot retroactively go back and
14 deprive people of those rights. So the question before
15 the Board today is what can this Board do prospectively,
16 not whether or not this Board can rewrite the law
17 retroactively.

18 MR. CHAIRMAN: Just to further clarify that, Mr. Riggs, isn't
19 it true that this Board would not have legal authority to
20 promulgate a field rule and make it apply to all wells
21 within a county?

22 MS. RIGGS: Just as the Legislature could not retroactively
23 pass the laws, this Board cannot retroactively go back
24 and impose rules on existing wells. And there are sound
25 legal foundations for that based on the constitution and

1 statutory constraints.

2 MR. CHAIRMAN: Now, if the Board did decide to hold future
3 hearings and did enact field rules it would be from the
4 date of the field rule enactment or a date set in the
5 field rule as a date certain for wells drilled on or
6 after that date. Isn't that correct, that would be
7 where the statutory authority lay.

8 MS. RIGGS: As in the case of Pilgrim's Knob, when those field
9 rules were laid over they did not apply to well in
10 existence on the date the field rules were imposed. So
11 the remedy that the Board's considering today and that
12 is whether or not given this pattern there are areas of
13 development that now have sufficient information for this
14 Board to consider the imposition of field rules that
15 would differ statewide spacing. That's a prospective
16 remedy. You're concern is a retroactive remedy -- well,
17 it's both I assume. It's for future protection as well
18 as retroactive application. And from what I'm hearing
19 what you're asking this Board to do is rewrite the
20 statute to make it retroactive.

21 MR. RILEY: I don't consider it retroactive. What I'm asking
22 this Board to do is -- at the point that they made the
23 500 feet radius a 1,250 feet radius, make that apply to
24 all wells, not just wells drilled from then on. From
25 that date it should apply to all wells.

1 MS. RIGGS: Prospectively, not retrospectively.

2 MR. RILEY: You don't have to pay them back for gas you got
3 six months ago but as from the date of that you do start
4 paying them. And then when you made it 1,320 feet then
5 that applies to all wells and you start paying. I'm not
6 asking you to make them pay back money. From that day on
7 you should pay it because, as I said, what are you going
8 to do, just write those people off? Because we all know
9 their gas was taken.

10 MS. RIGGS: Well, it would appear to me that that would depend
11 on a case by a case -- the law doesn't act in a vacuum
12 and that's why you have the requirement for hearing and
13 notice and evidence to be presented. So that these
14 decisions can be made on a case by case basis. You have
15 contractual relationships here that you cannot impair by
16 blanket retroactive application in the manner that you're
17 talking about. And it's very difficult for me to address
18 this issue and not be specific to a particular well or a
19 particular situation. We're talking about broad princi-
20 ples of statutory construction and constitutional
21 prohibitions against impairment of contracts and those
22 kind of things. So we're all sitting here talking about
23 broad brush applications and not looking at any particu-
24 lar field, any particular county, any particular well, any
25 particular set of circumstances and facts that would

1 impact on a decision of that kind. The Board has to have
2 evidence before it in a particular case brought in the
3 manner prescribed by law. You cannot just go out and
4 rearrange contractual relationships. And the proper way
5 then is to petition the Board as provided by law on a
6 case by case basis if the people within that well have an
7 objection. Now, the Board can prospectively look at the
8 information Mr. Fulmer's provided and make a determina-
9 tion of whether or not it wishes to consider imposing
10 field rules in a particular set of circumstances based on
11 the facts within that area which is what's on the agenda
12 today, as I understand it.

13 MR. CHAIRMAN: That's right.

14 MR. RILEY: Well, that's what I consider the sort of institut-
15 ionalized inertia. You're not going to do anything
16 unless I run a geologist up here, a lawyer up here, and
17 all these specialists on gas wells. And I'll spend
18 \$10,000 to prove to me that they owe me \$500 and it's
19 economically unfair to have to do such a thing. Of
20 course, I consider that's your job to do that.

21 MR. COUNTS: It seems to me that Mr. Riley has a double
22 standard. He wants his due process protected but he
23 doesn't want anybody else's due process protected. It's
24 Mr. Riley's burden if he feels that there's been a mis-
25 carriage of justice to bring that testimony and bring

1 that evidence before this Board. And he's not done
2 that.

3 MR. RILEY: Well, I don't pretend to be a lawyer and a very
4 sharp lawyer like Mr. Counts, but I'm just presenting to
5 this Board the feeling of the citizens and why we feel
6 unprotected by this Board. I notice here today there's
7 only one citizen representative here when there's suppose
8 to be four on this Board. I can't blame you for that,
9 but they're just not here.

10 MR. CHAIRMAN: There was two yesterday, but it is correct
11 that today there's only --

12 MR. RILEY: I think that's your job here, to be looking after
13 us.

14 MR. CHAIRMAN: The Board has a right on its own motion clearly
15 anytime that it believes that the field rules should be
16 under consideration or it should discuss that to do that.
17 The Board if it were to take any particular case and try
18 to go out on an initiative of it's own would not be
19 staying within the statutory constraints. And I have to
20 always be concerned about that. As Chairman of the
21 Board I have that responsibility. Ms. Riggs has the
22 responsibility serving as legal counsel to the Board to
23 keep us within those constraints. For us to go out and
24 promulgate field rules that breech the statute would make
25 this Board liable beyond the protections of the Common-

1 wealth. It could possibly even make us individually
2 liable. It's not a matter of not being sympathetic to
3 some of the kind of things that come before the Board.
4 But the fact of the matter is these laws do not extend
5 the kinds of protection that you're asking to be extend-
6 ed. They don't extend it in the law as written and they
7 don't extend it to the Board. The Board does not have
8 the authority -- that's what I tried to convey to you in
9 writing -- to go beyond the statute to create new law.
10 It does have the authority to promulgate field rules.
11 But when it promulgates field rules those field rules are
12 effective from that date forward, not retroactively. And
13 there's liability involved even in promulgating field
14 rules. As Ms. Riggs stated, to breach contractual
15 arrangements and those kind of things. There's a lot of
16 consideration that has to go into field rules and there's
17 a lot of guidance in the law and regulations about the
18 kinds of information that are needed to promulgate field
19 rules such as the drainage that is, in fact, occurring
20 and the other kinds of information. We had extensive
21 information presented on the Pilgrim's Knob area before
22 we enacted those field rules. I'm not trying to do this
23 as a debate. I'm trying to do this just as an open
24 discussion. Okay?

25 MR. RILEY: I take your comments, as I understand them, that

1 there's nothing you can do as of this time for any well
2 that's been drilled under any previous addition of the
3 law. You can only operate under the current law, under
4 the current rules and regulations. And you cannot -- and
5 this Board will not do anything about these other people
6 who have had their gas developed without compensation.

7 MR. CHAIRMAN: We cannot impose any rule that would change the
8 500 foot requirement or the 1,250 -- and that's even
9 debatable whether or not that was -- what was intended or
10 the 1,250 foot requirement. We can only enact if the
11 Board decides to hold future hearings. We could only
12 enact a field rule that would become effective from that
13 date forward and would stipulate an area to be paid -- a
14 pay zone, if you will, from that date forward. It could
15 not make that apply anytime in the past.

16 MR. RILEY: Ms. Riggs, to answer your question about a
17 specific well, take well P216 up at the middle of the
18 world in Dickenson County. There are many incidents of
19 this nature throughout Dickenson, Wise and Buchanan
20 County where certain portions of an estate when it was
21 sold -- minerals were severed from the surface they
22 withheld four acres under the house, two acres under the
23 cemetery or things like that. This particular well is
24 about 550 feet from where the old house stood and no
25 royalties are being paid to that individual for those

1 four acres that were excused or not included in the
2 mineral severance and the other acre where the cemetery
3 was because they're outside of the 500 feet. And there's
4 many many instances like that, but there's a particular
5 number for you if you're interested and you want to look
6 into a particular number.

7 MR. CHAIRMAN: Any questions, members of the Board, or
8 comments? Does anyone else wish to address the Board in
9 this matter?

10 MR. RILEY: Well, I would just like to close by saying I
11 certainly appreciate the Board at least considering this
12 matter.

13 MR. CHAIRMAN: We have not closed consideration for what it
14 says on the agenda, to consider holding a future hearing
15 to consider field rules for wells drilled prior to and
16 therefore not covered by the statewide spacing. But I
17 hope I've clarified the view as interpreted within our
18 legal authority. Any other persons wishing to address
19 the Board in this matter? Members of the Board, do you
20 have any recommendations on what your pleasure is
21 regarding this matter?

22 MR. EVANS: What I would like to see, if it's possible, is the
23 Attorney General's opinion as to the retroactive applica-
24 tion of distances and spacing as it regards to wells in
25 Virginia. And I would also like to suggest that possibly

1 a work committee be formed if there is sufficient
2 interest to study the need, feasibility, additional data
3 requirements for possibly establishing field rules in
4 those areas that field rules have not been established.

5 MR. CHAIRMAN: Was that a motion?

6 MR. EVANS: I'll make that as a motion.

7 MR. KELLY: If I could just add to that for your
8 consideration that possibly Mr. Fulmer and his staff
9 could utilize information in their possession and come up
10 with some recommended areas or some recommended situa-
11 tions that we might consider for possible field rules or
12 for further discussion anyway.

13 MR. EVANS: That's fine.

14 MR. CHAIRMAN: Any other comments?

15 MR. MCGLOTHLIN: I have a comment. Mr. Chairman, I can
16 sympathize with Mr. Riley and his concerns and only wish
17 that certain provisions that are now in the statute were
18 there in 1900. Unfortunately they weren't and there's
19 not a whole I feel that this Board can do for previous
20 wells. However, I think that it is this Board's respons-
21 ibility to start looking at the entire Commonwealth on a
22 county by county basis and start promulgating field rules
23 throughout the Commonwealth. I think it will clarify the
24 responsibilities of future Boards and future generations
25 of the Commonwealth and I think it would be in our best

1 interest and the best interest of the Commonwealth for
2 this Board to take that initiative. Just start at one
3 end of the state and completely go across the Common-
4 wealth and do this. Thank you.

5 MR. COUNTS: Mr. Chairman, is it appropriate to make any
6 further comments before the Board rules on the motion
7 before it?

8 MR. CHAIRMAN: Go ahead.

9 MR. COUNTS: Thank you. I think that the AG's opinion is most
10 desirable not only from the standpoint of the public
11 which Mr. Riley is speaking on behalf of but also
12 industry and the Board and Board members themselves. I
13 would however indicate on behalf of Equitable our
14 opposition to a work study committee. Those committees
15 we have had have worked, I think, very well previously
16 but they have dealt with issues that have been able to be
17 uniformly applied throughout the Commonwealth with
18 respect to operations, regulations, etcetera. It's
19 obvious that in these various areas where you just have
20 by the nature of the maps on the wall themselves. If
21 these were all homogenous reservoirs that had the same
22 characteristics we would not see these isolated pods,
23 etcetera, of development. I think that there are a
24 number of operators involved, different fields, different
25 considerations, in some cases different producing

1 intervals and I think that it would be more appropriate
2 for either those operators to make applications for
3 special field rules or as a result of the study that the
4 Board's conducted -- the work that the Board has done in
5 those areas where the Board feels it appropriate to make
6 those motions on its own behalf with respect to special
7 field rules. I don't think that this is a situation that
8 is appropriate or desirable from the standpoint of an
9 overall work study committee.

10 MR. CHAIRMAN: Mr. Riley, do you have any other comments?

11 MR. RILEY: Well, I'll just address Mr. Counts on this. I
12 think basically what you have said and the Attorney
13 General's representative has said is that there is no
14 remedy in law or rule or regulation on this. I think
15 it's basically going to end up being a reputation repair
16 exercised by the gas developers in Virginia. They're
17 going to have to take it upon themselves to adequately
18 compensate the people that they've been getting their gas
19 from for years. Because we know that the law is not
20 going to be changed and there's no retroactive provisions
21 allowed in the law. It's up to them to repair their own
22 reputations.

23 MS. RIGGS: In terms of the official Attorney General's
24 opinion, if the Board should chose to go that route,
25 there are pretty constrained requirements in structuring

1 your request. So you would need to be very specific
2 about the opinion that you're asking.

3 MR. CHAIRMAN: In the way of clarifying, as I would understand
4 it, Mr. Evans, you were asking for an Attorney General
5 opinion regarding the 1,320 foot rule of the 1990 act and
6 whether or not it had a retroactive application to all
7 wells drilled prior to that date.

8 MR. EVANS: Correct.

9 MR. CHAIRMAN: That's in it's simplest form. And I think it's
10 too the heart of all the other issues.

11 MR. FULMER: This is just an observation as far as -- we're
12 talking in this instance about conventional wells. But I
13 think if you look at Section 17 in the statute in regards
14 -- it's in regards to spacing all wells. The 1,320 is
15 specifically as to the type of well that is not exactly
16 to a well. I just throwed that in as far as information,
17 but it does take into consideration coalbed methane which
18 is a gas well, too. And I don't know if you want to be
19 specific as to a conventional gas well as to all wells in
20 regards to spacing and it's involvement with the protec-
21 tion of correlative rights. That's what that whole
22 issue is on 17.

23 MR. EVANS: My concern was primarily with what has been
24 brought today, conventional gas.

25 MR. CHAIRMAN: Did you agree to amend your motion effectively

1 or do you have any other changes?

2 MR. EVANS: To the extent of Mr. Kelly's comments, I think
3 basically it's a work group to study the need to develop
4 field rules on our motion. We can ask for -- it doesn't
5 mean that there necessarily has to be an action that
6 field rules are -- that's the determination to be made.
7 I think that it will be on a specific recommendation
8 based on what we find during this study. It wasn't
9 designed to say, "Okay. We're going to start in one
10 corner of the state and grid the whole state off this way
11 or that way." It's going to be what's there now where
12 the development appears to be occurring and is there a
13 need for field rules in that area and if so -- if we
14 need additional information ask for it and go through the
15 rest of the process. But my motion was strictly to
16 first of all determine need for field rules.

17 MR. KELLY: Let me just interject this maybe for further
18 consideration as far as the actual wording of the motion.
19 It may be even simpler than actually forming a work study
20 group. I'm not sure exactly what the intent would be as
21 far as the composition of that group. But it may be
22 possibly more appropriate consideration might be is
23 simply to let Mr. Fulmer and his staff evaluate the
24 active areas and the areas that are currently under
25 development or whether development appears to be heading

1 in certain areas. Identify certain areas to the Board
2 and then based on the information supplied we could
3 determine from that if there are certain areas that need
4 to be considered for field rules.

5 MR. EVANS: I'll amend my motion to reflect Mr. Kelly's
6 statement.

7 MR. KELLY: He's the one with the information. It may be a
8 simpler matter for him to do it that way.

9 MR. EVANS: Okay.

10 MR. COUNTS: I think that's more consistent with the provis-
11 ions of 361.20.A with regard to the Board's consideration
12 of those types of matters.

13 MR. CHAIRMAN: We have a motion. And that motion is going
14 to be what?

15 MR. EVANS: Two part.

16 MR. CHAIRMAN: Requesting an Attorney General opinion
17 regarding the 1.320 foot rule and 1990 act and whether or
18 not it can be retroactively applied to wells drilled
19 before that date.

20 MR. EVANS: Correct.

21 MR. CHAIRMAN: Regarding conventional wells. And requesting
22 that the Gas and Oil Inspector to recommend areas right
23 for consideration for field rules.

24 MR. EVANS: Correct.

25 MR. CHAIRMAN: Do I have a second?

1 MR. MCGLOTHLIN: Second.

2 MR. CHAIRMAN: Motion and a second. Any further
3 discussion? All in favor signify by saying yes. (ALL
4 AFFIRM.) Opposed say no. (NONE.) The motion carries.
5 Let's recess for five minutes and let me talk with Mr.
6 Riley.

7 (AFTER A BRIEF RECESS, THE HEARING CONTINUED AS FOLLOWS:)

8 MR. CHAIRMAN: I've discussed with Mr. Riley what he wanted to
9 address the Board on and I'm going to allow him to -- he
10 wants to read a page of information into the record for
11 the Board's consideration and I'm going to allow him to
12 do that. I believe that it's relevant and close enough
13 to what we had under consideration here in our field
14 rules and everything else. We'll allow him to go ahead
15 and do that. Mr. Riley.

16 MR. RILEY: I'll just read this statement. I'll make a copy
17 and give it to you. "When this Board establishes a pool
18 or the gas inspector approves a permit more than gas
19 development takes place in Dickenson County. Your
20 actions have a far reaching effect that in some instances
21 not only give away people's gas property but their
22 surface estate as well. Gas developers operate under the
23 concept that the entire surface estate over any mineral
24 tract or the smallest portion of any mineral tract
25 included in the permit or the pool is theirs to use as

1 they deem appropriate. Developers feel they can lay
2 pipelines, install electric power lines or put roads
3 where ever they wish on the entire surface estate. We
4 feel this is grossly unfair. Landowners should not have
5 to suffer this subjugation of their surface estate nor
6 should gas developers initiate such activities without a
7 proper right-of-way agreement. This matter appears to be
8 institutionalized discrimination against landowners as
9 this Board, the gas inspector, the Department of Mines,
10 Minerals and Energy and the Attorney General's represent-
11 ative readily and routinely permit such activities in
12 Dickenson County. Gas developers in our estimation are
13 in direct violation of the Virginia Code 45.1-361.3 which
14 outlines the purpose of the Gas and Oil Act and states --
15 on subparagraph 7 -- to recognize that use of the
16 surface for gas or oil development shall be only that
17 which is reasonably necessary to obtain the gas or oil."
18 Complete freedom on the part of gas developers to do
19 whatever they want whenever they want and where ever they
20 want is considered by us to be unreasonable use of the
21 surface estate. Thank you.

22 MR. CHAIRMAN: Thank you, Mr. Riley. Anything from the
23 members of the Board? If there's nothing further this
24 hearing is concluded. Thank you.
25

(End of Proceedings for
(January 20, 1993)

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2 CERTIFICATE
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4 COMMONWEALTH OF VIRGINIA

5 COUNTY OF WASHINGTON
6

7 I, Deborah J. Bise, Notary Public in and for the Common-
8 wealth of Virginia, at Large, do hereby certify that the
9 foregoing proceedings of the Virginia Gas and Oil Board
10 meeting held on January 20, 1993 in the Conference Room at
11 the 4-H Center, Abingdon, Virginia, were taken by me and that
12 the foregoing is a true and correct transcript of the proceed-
13 ings had as aforesaid to the best of my ability.

14 I further certify that I am not a relative, counsel, or
15 attorney for either party, or otherwise interested in the
16 outcome of this action.
17

18 GIVEN under my hand this 5th day of February, 1993.
19

20 Deborah J. Bise
21 DEBORAH J. BISE
22 NOTARY PUBLIC
23

24 My commission expires September 30, 1996.
25